



# भारत का राजपत्र The Gazette of India

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सं. 42] नई दिल्ली, अक्टूबर 20—अक्टूबर 26, 2024, शनिवार/आश्विन 28—कार्तिक 4, 1946  
No. 42] NEW DELHI, OCTOBER 20—OCTOBER 26, 2024, SATURDAY/ASVINA 28—KARTIKA 4, 1946

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके  
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)  
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं  
Statutory Orders and Notifications Issued by the Ministries of the Government of India  
(Other than the Ministry of Defence)

वित्त मंत्रालय  
(वित्तीय सेवाएं विभाग)

नई दिल्ली, 7 अक्टूबर, 2024

का.आ. 1976.—भारतीय रिजर्व बैंक अधिनियम, 1934 की धारा 8 की उप-धारा (4) के साथ पठित धारा 8 की उप-धारा (1) के खंड (क) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्वारा, श्री एम. राजेश्वर राव (जन्म तिथि 28.4.1961) को दिनांक 9.10.2024 से एक वर्ष की अवधि के लिए अथवा अगले आदेशों तक, जो भी पहले हो, भारतीय रिजर्व बैंक में उप-गवर्नर के पद पर पुनः नियुक्त करती है।

[ई फा.सं. 1/1/2023-बीओ-I]

संजय कुमार मिश्र, अवर सचिव

**MINISTRY OF FINANCE**  
**(Department of Financial Services)**

New Delhi, the 7th October, 2024

**S.O. 1976.**—In exercise of the powers conferred by clause (a) of sub-section (1) of section 8 of The Reserve Bank of India Act, 1934, read with sub-section (4) of section 8 thereof, the Central Government hereby re-appoints Shri M. Rajeshwar Rao (Date of Birth: 28.4.1961) as Deputy Governor, Reserve Bank of India for a period of one year with effect from 9.10.2024, or until further orders, whichever is earlier.

[e F. No. 1/1/2023-BO.-I]

SANJAY KUMAR MISHRA, Under Secy.

**(राजस्व विभाग)**

नई दिल्ली, 18 अक्टूबर, 2024

**का.आ. 1977.**—केन्द्र सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उप-नियम (4) के अनुसरण में राजस्व विभाग के केन्द्रीय अप्रत्यक्ष कर एवं सीमाशुल्क बोर्ड के अधीन, निम्नलिखित कार्यालयों जिसके 80 प्रतिशत से अधिक कर्मचारियों ने हिन्दी का कार्यसाधक ज्ञान प्राप्त कर लिया है, को अधिसूचित करती है:

1. केन्द्रीय माल और सेवा कर एवं केन्द्रीय उत्पाद शुल्क, आगरा के अधीनस्थ मंडल कार्यालय:
  - i. केन्द्रीय माल और सेवा कर, मंडल फिरोजाबाद
  - ii. केन्द्रीय माल और सेवा कर, मंडल-द्वितीय, आगरा
  - iii. केन्द्रीय माल और सेवा कर, मंडल-प्रथम, आगरा
  - iv. केन्द्रीय माल और सेवा कर, मंडल अलीगढ़
  - v. केन्द्रीय माल और सेवा कर, मंडल मथुरा
2. केन्द्रीय माल और सेवा कर एवं केन्द्रीय उत्पाद शुल्क, अहमदाबाद उत्तर के अधीनस्थ मंडल कार्यालय:
  - i. केन्द्रीय माल और सेवा कर एवं केन्द्रीय उत्पाद शुल्क, मंडल-I, नरोड़ा
  - ii. केन्द्रीय माल और सेवा कर एवं केन्द्रीय उत्पाद शुल्क, मंडल-II, नरोड़ा रोड़
  - iii. केन्द्रीय माल और सेवा कर एवं केन्द्रीय उत्पाद शुल्क, मंडल-III, सानंद
  - iv. केन्द्रीय माल और सेवा कर एवं केन्द्रीय उत्पाद शुल्क, मंडल-IV, चांगोदर
  - v. केन्द्रीय माल और सेवा कर एवं केन्द्रीय उत्पाद शुल्क, मंडल-V, धोलका
  - vi. केन्द्रीय माल और सेवा कर एवं केन्द्रीय उत्पाद शुल्क, मंडल-VI, एसजी हाइवे पश्चिम
  - vii. केन्द्रीय माल और सेवा कर एवं केन्द्रीय उत्पाद शुल्क, मंडल-VII, एसजी हाइवे पूर्व
3. केन्द्रीय माल और सेवा कर एवं केन्द्रीय उत्पाद शुल्क, इलाहाबाद के अधीनस्थ मंडल कार्यालय
  - i. केन्द्रीय माल और सेवा कर एवं केन्द्रीय उत्पाद शुल्क, मंडल-I, इलाहाबाद
  - ii. केन्द्रीय माल और सेवा कर एवं केन्द्रीय उत्पाद शुल्क, मंडल-II, इलाहाबाद
  - iii. केन्द्रीय माल और सेवा कर एवं केन्द्रीय उत्पाद शुल्क, मंडल-रायबरेली
  - iv. केन्द्रीय माल और सेवा कर एवं केन्द्रीय उत्पाद शुल्क, मंडल-फैजाबाद
  - v. केन्द्रीय माल और सेवा कर एवं केन्द्रीय उत्पाद शुल्क, मंडल-जौनपुर

4. केंद्रीय माल और सेवा कर एवं केंद्रीय उत्पाद शुल्क, लेखा परीक्षा-I, मुंबई
5. केंद्रीय माल और सेवा कर एवं केंद्रीय उत्पाद शुल्क, जम्मू
6. केंद्रीय माल और सेवा कर एवं केंद्रीय उत्पाद शुल्क, तिरुपति

[फा. सं. ई-11017/3/2017- हिन्दी- II-अधिसूचना]

शिशिर शर्मा, संयुक्त निदेशक (राजभाषा)

**(Department of Revenue)**

New Delhi, the 18th October, 2024

**S.O. 1977.**—In pursuance of sub-rule (4) of Rule 10 of the Official Language (Use for Official Purpose of the Union) Rules, 1976, the Central Government, hereby notifies, the following Offices under the Central Board of Indirect Taxes and customs, Department of revenue where more than 80% staff has acquired the working knowledge of Hindi:

1. Divisional Offices under Central Goods & Services Tax & Central Excise, Agra:
  - i. Central Goods and Services Tax, Division Firozabad
  - ii. Central Goods and Services Tax, Division-II , Agra
  - iii. Central Goods and Services Tax, Division-I , Agra
  - iv. Central Goods and Services Tax, Division Aligarh
  - v. Central Goods and Services Tax, Mathura Division
2. Divisional Offices subordinate to Central Goods & Services Tax & Central Excise, Ahmedabad North:
  - i. Central Goods and Services Tax & Central Excise, Division -I, Naroda
  - ii. Central Goods and Services Tax & Central Excise, Division -II, Naroda Road
  - iii. Central Goods and Services Tax & Central Excise, Division -III, Sanand
  - iv. Central Goods and Services Tax & Central Excise, Division -IV, Changodar
  - v. Central Goods and Services Tax & Central Excise, Division -V, Dholka
  - vi. Central Goods & Services Tax & Central Excise, Division -VI, SG Highway West
  - vii. Central Goods & Services Tax & Central Excise, Division -VII, SG Highway East
3. Divisional Offices under Central Goods & Services Tax & Central Excise, Allahabad
  - i. Central Goods and Services Tax & Central Excise, Division -I, Allahabad
  - ii. Central Goods and Services Tax & Central Excise, Division -II, Allahabad
  - iii. Central Goods and Services Tax and Central Excise, Division- Raebareli
  - iv. Central Goods and Service Tax and Central Excise, Division- Faizabad
  - v. Central Goods and Services Tax and Central Excise, Division- Jaunpur
4. Central Goods & Services Tax & Central Excise, Audit -I, Mumbai
5. Central Goods and Services Tax and Central Excise, Jammu
6. Central Goods and Services Tax & Central Excise, Tirupati

[F. No. E-11017/3/2017- Hindi-II-Notification]  
SHISHIR SHARMA, Jt. Director (OL)

**विदेश मन्त्रालय**  
**(सी.पी.वी. प्रभाग)**

नई दिल्ली, 21 अक्टूबर, 2024

**का.आ. 1978.**—राजनयिक और कंसुलीय अधिकारी (शपथ एवं फीस) के अधिनियम, 1948 की धारा 2 के खंड (क) के अनुसरण में वैधानिक आदेश।

एतद्वारा, सरकार भारत के दूतावास, ट्यूनिस् में श्री मोहित शर्मा, सहायक अनुभाग अधिकारी, को अक्टूबर 21, 2024 से सहायक कांसुलर अधिकारी के रूप में कांसुलर सेवाओं का निर्वहन करने के लिए अधिकृत करती है।

[फा. सं. टी-4330/01/2024(33)]

एस.आर.एच. फहमी, निदेशक (सीपीवी-I)

**MINISTRY OF EXTERNAL AFFAIRS**  
**(CPV Division)**

New Delhi, the 21st October, 2024

**S.O. 1978.**—Statutory Order in pursuance of the clause (a) of the Section 2 of the Diplomatic and Consular Officers (Oaths and fees) Act, 1948 (41 of 1048), the Central Government hereby appoints Shri Mohit Sharma, Assistant Section Officer as Assistant Consular Officer in the Embassy of India, Tunis, to perform the consular services as Assistant Consular Officer with effect from October 21, 2024.

[F. No. T-4330/01/2024(33)]

S.R.H FAHMI, Director (CPV-I)

**कार्मिक, लोक शिकायत तथा पेंशन मंत्रालय**  
**(कार्मिक और प्रशिक्षण विभाग)**

नई दिल्ली, 18 जून 2024

**का.आ. 1979.**—केन्द्र सरकार, एतद् द्वारा दिल्ली विशेष पुलिस स्थापना अधिनियम, 1946 (1946 का 25) की धारा 3 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, भारतीय न्याय संहिता, 2023 (2023 का 45) के निम्नलिखित अपराधों को विनिर्दिष्ट करती है, जिनका अन्वेषण दिल्ली विशेष पुलिस स्थापना के सदस्यों द्वारा किया जाना है, अर्थात:-

(क) 1(5), 3, 49, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 147, 148, 149, 150, 151, 156, 157, 158, 159, 160, 161, 162, 163, 164, 166, 168, 189, 191, 190, 192, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 173, 174, 209, 217, 221, 223, 224, 225, 229, 232, 233, 234, 235, 236, 237, 238, 240, 241, 248, 249, 251, 253, 254, 255, 256, 258, 260, 261, 262, 263, 265, 72, 73, 269, 178, 181, 179, 180, 187, 188, 183, 184, 185, 186, 277, 279, 281, 285, 286, 287, 288, 289, 294, 296, 298, 299, 103, 104, 105, 106, 80, 107, 108, 109, 110, 115, 118, 117, 124, 123, 120, 121, 122, 125, 126, 127, 131, 132, 74, 75, 76, 77, 78, 133, 137, 139, 140, 87, 96, 141, 142, 143, 144, 145, 98, 99, 146, 64, 65, 66, 67, 68, 70, 71, 303, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 316, 317, 318, 319, 320, 322, 321, 323, 324, 325, 326, 329, 332, 333, 331, 334, 336, 337, 338, 340, 341, 339, 342, 343, 344, 345, 347, 348, 346, 182, 82, 85, 86, 356, 352, 353, 351, 79, 62, 230, 231, 48, 69, 95, 103, 111, 112, 113, 152, 195, 226, 304 धाराओं के अंतर्गत दंडनीय अपराध।

(ख) उपर्युक्त अपराध(धों) से जुड़े या उससे संबद्ध किसी दुष्प्रयास, दुष्प्रेरणा और/अथवा षड्यंत्र एवं/अथवा उसी संव्यवहार में किए गए या उन्हीं तथ्यों से उत्पन्न किसी अन्य अपराध(ओं)।

[फा. सं. 228/51/2024-AVD-II]

कुंदन नाथ, अवर सचिव

**MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS****(Department of Personnel and Training)**

New Delhi, the 18th June, 2024

**S.O. 1979.**—In exercise of the powers conferred by Section 3 of the Delhi Special Police Establishment Act, 1946 ( Act No. 25 of 1946), the Central Government hereby specifies the following offences of The Bharatiya Nyaya Sanhita, 2023 (45 of 2023) which are to be investigated by the members of the Delhi Special Police Establishment, namely :-

(a) Offences punishable under sections---- 1(5), 3, 49, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 147, 148, 149, 150, 151, 156, 157, 158, 159, 160, 161, 162, 163, 164, 166, 168, 189, 191 , 190, 192, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 173, 174, 209, 217, 221, 223, 224, 225, 229, 232, 233, 234, 235, 236, 237, 238, 240, 241, 248, 249, 251, 253, 254, 255, 256, 258, 260, 261, 262, 263, 265, 72, 73, 269, 178, 181, 179, 180, 187, 188, 183, 184, 185, 186, 277, 279, 281, 285, 286, 287, 288, 289, 294, 296, 298, 299, 103, 104, 105, 106, 80, 107, 108, 109, 110, 115, 118, 117, 124, 123, 120, 121, 122, 125, 126, 127, 131, 132, 74, 75, 76, 77 , 78, 133, 137, 139, 140, 87, 96, 141, 142, 143, 144, 145, 98, 99, 146, 64, 65, 66, 67, 68, 70, 71, 303, 305 , 306, 307, 308, 309, 310, 311, 312, 313, 314, 316, 317, 318, 319, 320, 322, 321, 323, 324, 325, 326, 329, 332, 333, 331, 334, 336, 337, 338, 340, 341, 339, 342, 343, 344, 345, 347, 348, 346, 182, 82, 85, 86, 356, 352, 353, 351, 79, 62, 230, 231, 48, 69, 95, 103, 111, 112, 113, 152, 195, 226, 304.

(b) Any attempt, abetment and/or conspiracy, in relation to or in connection with above mentioned offence(s) and/or for any other offence(s) committed in the course of the same transaction or arising out of the same facts.

[F. No. 228/51/2024-AVD-II]

KUNDAN NATH, Under Secy.

नई दिल्ली, 15 अक्तूबर, 2024

**का.आ. 1980.**—केंद्र सरकार एतद द्वारा दिल्ली विशेष पुलिस स्थापना अधिनियम, 1946 (1946 का अधिनियम सं. 25) की धारा 3 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए निम्नलिखित अपराधों को विनिर्दिष्ट करती है जिनका अन्वेषण भी दिल्ली विशेष पुलिस स्थापना के सदस्यों द्वारा किया जाना है, नामतः:-

- (क) भारतीय दंड संहिता (1860 का अधिनियम सं. 45) की धारा 177 और 219 के अंतर्गत दंडनीय अपराधों;
- (ख) भारतीय न्याय संहिता, 2023 (2023 का 45) की धारा 212 और 257 के अंतर्गत दंडनीय अपराधों और
- (ग) उपर्युक्त अपराध(धों) से जुड़े या उससे संबद्ध किसी दुष्प्रयास, दुष्प्रेरणा और/अथवा षड्यंत्र एवं/अथवा उसी संव्यवहार में किए गए या उन्हीं तथ्यों से उत्पन्न किसी अन्य अपराध(धों)।

[फा. सं. 228/51/2024-एवीडी-II]

सत्यम श्रीवास्तव, अवर सचिव

New Delhi, the 15th October, 2024

**S.O. 1980.**—In exercise of the powers conferred by Section 3 of the Delhi Special Police Establishment Act, 1946 (Act No. 25 of 1946), the Central Government hereby specifies the following offences which are also to be investigated by the members of the Delhi Special Police Establishment, namely :-

- (a) Offences punishable under sections 177 and 219 of the Indian Penal Code, (Act No. 45 of 1860);
- (b) Offences punishable under sections 212 and 257 of the Bharatiya Nyaya Sanhita, 2023, (45 of 2023) and

- (c) Any attempt, abetment and/or conspiracy, in relation to or in connection with above mentioned offence(s) and/or for any other offence(s) committed in the course of the same transaction or arising out of the same facts.

[F. No. 228/51/2024-AVD-II]

SATYAM SRIVASTAVA, Under Secy.

### सूचना और प्रसारण मंत्रालय

नई दिल्ली, 17 अक्टूबर, 2024

**का.आ. 1981.**—केंद्र सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उप नियम (4) के अनुसरण में दूरदर्शन महानिदेशालय के अधीनस्थ कार्यालय यथा दूरदर्शन केंद्र, डालटनगंज जिनके 100% कर्मचारियों ने हिंदी का कार्यसाधक ज्ञान प्राप्त कर लिया है, को अधिसूचित करती है।

[फा. सं. ई-11017/10/2017-हिंदी]

प्रीति थापा, सहायक निदेशक (राजभाषा)

### MINISTRY OF INFORMATION AND BROADCASTING

New Delhi, the 17th October, 2024

**S.O. 1981.**—In pursuance of Sub-Rule (4) of Rule 10 of the Official Languages (Use for Official Purposes of the Union) Rules, 1976, the Central Government hereby notifies the subordinate office of Directorate General, Doordarshan namely Doordarshan Kendra, Daltonganj whereof 100% of the staff have acquired the working knowledge of Hindi.

[F. No. E-11017/10/2017-Hindi]

PREETI THAPA, Assistant Director (O.L.)

### श्रम एवं रोजगार मंत्रालय

नई दिल्ली, 15 अक्टूबर, 2024

**का.आ. 1982.**—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार यूपी स्टेट वेयरहाउसिंग कॉर्पोरेशन के प्रबंधन के संबंध में नियोजकों और यूपी स्टेट वेयरहाउसिंग कॉर्पोरेशन एंड श्री श्याम मोहन मिश्रा के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, लखनऊ, पंचाट (रिफरेन्स न. 60/2013) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 15.10.2024 को प्राप्त हुआ था।

[सं. एल-42012/52/2013-आईआर(डीयू)]

दिलीप कुमार, अवर सचिव

### MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 15th October, 2024

**S.O. 1982.**—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (**Reference No. 60/2013**) of the **Central Government Industrial Tribunal cum Labour Court, Lucknow** as shown in the Annexure, in the Industrial dispute between the employers in relation

to UP State Warehousing Corporation and UP State Warehousing Corporation & Shri Shyam Mohan Mishra which was received along with soft copy of the award by the Central Government on 15.10.2024.

[No. L-42012/52/2013-IR(DU)]

DILIP KUMAR, Under Secy.

## ANNEXURE

### CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM- LABOUR COURT, LUCKNOW

#### PRESENT

**JUSTICE ANIL KUMAR**  
**PRESIDING OFFICER**

**I.D. No. 60/2013**

**Ref. No. L-42012/52/2013-IR(DU) dated: 04.09.2013/06.09.2013**

#### BETWEEN

The Secretary, UP State Warehousing Corporation

c/o Dr. Shilendra Kumar and Shri D.P.S. Chouhan Advocate

C-16, L-Park Mahanagar Extention, Lucknow and Shri Shyam Mohan Mishra Son of Shi Yugal Kishor Mishra,  
House No. 426/1374, Vajirbagh, Khariyahi Sahadatganj, Lucknow

#### AND

The Director

UP State Warehousing Corporation  
Hyderabad, Lucknow and New Delhi

#### AWARD

On 04.09.2013/06.09.2013 appropriate government by order no. L-42012/52/2013-IR(DU) has referred the following dispute to this Tribunal; and accordingly the I.D. Case No. 60/2013 was registered:-

*"Whether the action of the management of UP State Warehousing Corporation Hyderabad, Lucknow and New Delhi by not regulating the services of workman Shri Shyam Mohan Mishra and 04 others is illegal and unjustified? To what relief the workman concerned are entitled to?"*

#### **Preliminary Objection:**

Sri Prateek Tiwari, learned counsel for respondent on the basis of pleading in written statement (para 9), taken a preliminary objection that the UP State Warehousing Corporation is not an industry for which appropriate government is Central Government; rather the 'Appropriate Government' is State Government and place reliance on the definition of 'appropriate government' as given in section 2(a) of the Industrial Disputes Act, 1947. Section 2 (a) of the Industrial Disputes Act, 1947 reads as under:

*"2. (a) "appropriate Government" means— (i) in relation to any industrial dispute concerning any industry carried on by or under the authority of the Central Government, or by a railway company 6[or concerning any such controlled industry as may be specified in this behalf by the Central Government] or in relation to an industrial dispute concerning [a Dock Labour Board established under section 5A of the Dock Workers (Regulation of Employment) Act, 1948 (9 of 1948), or 12[the Industrial Finance Corporation of India Limited formed and registered under the Companies Act, 1956 (1 of 1956)], or the Employees' State Insurance Corporation established under section 3 of the Employees' State Insurance Act, 1948 (34 of 1948), or the Board of Trustees constituted under section 3A of the Coal Mines Provident Fund and Miscellaneous Provisions Act, 1948 (46 of 1948), or the Central Board of Trustees and the State Boards of Trustees constituted under section 5A and section 5B, respectively, of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (19 of 1952), or the Life Insurance Corporation of India established under section 3 of the Life Insurance Corporation Act, 1956 (31 of 1956), or 14 [the Oil and Natural Gas Corporation Limited registered under the Companies Act, 1956 (1 of 1956)], or the Deposit Insurance and Credit Guarantee Corporation established under section 3 of the Deposit Insurance and Credit Guarantee Corporation Act, 1961 (47 of 1961), or the Central Warehousing Corporation established under section 3 of the Warehousing Corporations Act, 1962 (58 of 1962), or the Unit Trust of India established under section 3 of the Unit Trust of India Act, 1963 (52 of 1963), or the Food Corporation of India established under section*

3 or a Board of Management established for two or more contiguous States under section 16 of the Food Corporations Act, 1964 (37 of 1964), or 1[the Airports Authority of India constituted under section 3 of the Airports Authority of India Act, 1994 (55 of 1994)], or a Regional Rural Bank established under section 3 of the Regional Rural Banks Act, 1976 (21 of 1976), or the Export Credit and Guarantee Corporation Limited or the Industrial Reconstruction Bank of India 2[the National Housing Bank established under section 3 of the National Housing Bank Act, 1987 (53 of 1987)], or [an air transport service, or a banking or an insurance company], a mine, an oil field] [, a Cantonment Board,] or a [major port, any company in which not less than fifty-one per cent. of the paid-up share capital is held by the Central Government, or any corporation, not being a corporation referred to in this clause, established by or under any law made by Parliament, or the Central public sector undertaking, subsidiary companies set up by the principal undertaking and autonomous bodies owned or controlled by the Central Government, the Central Government, and

(ii) in relation to any other industrial dispute, including the State public sector undertaking, subsidiary companies set up by the principal undertaking and autonomous bodies owned or controlled by the State Government, the State Government: Provided that in case of a dispute between a contractor and the contract labour employed through the contractor in any industrial establishment where such dispute first arose, the appropriate Government shall be the Central Government or the State Government, as the case may be, which has control over such industrial establishment,”

Accordingly, it is submitted by Sri Prateek Tiwari, learned counsel for respondent that as per definition of ‘appropriate government’ given u/s 2(a) of the Act, as the present reference dated 04.09.2013/06.09.2013 by the appropriate government to this Tribunal is not maintainable as in the present case the workman, Shyam Mohan Mishra is employee of State Government Corporation for which appropriate government is State Government so, the same is liable to be dismissed.

Learned counsel for claimant, in rebuttal to above said submissions, placed reliance on the Warehousing Corporations Act, 1962 (58 of 1962) a copy of which has been filed before this Tribunal as workman evidence (W-19). Learned counsel for claimant on the basis of section 18 & 20 (5) of the Warehousing Corporation Act, 1962 which is reproduced herein below and section 20(5) submits that for the workman, Shyam Mohan Mishra on whose behalf present reference dated 04.09.2013/06.09.2013 has been made for adjudication to this Hon’ble Tribunal, the appropriate government will be ‘Central Government’ and the same is maintainable.

“Section 18. State Warehousing.

- (1) The State Government may, by notification in the Official Gazette and with the approval of the Central Warehousing Corporation, establish a Warehousing Corporation for the State under such name as may be specified in the notification.
- (2) A State Warehousing Corporation established under sub-section (1) shall be a body corporate by the name notified under that sub-section, having perpetual succession and a common seal, with power to acquire, hold and dispose of property and to contract, and may, by the said name, sue and be sued.
- (3) The head-office of a State Warehousing Corporation shall be at such place within the State as may be notified in the Official Gazette.
- (4) Notwithstanding anything contained in sub-sections (1), (2) and (3), it shall not be necessary for the State Government to establish a Corporation under sub-section (1) where, under clause (g) of sub-section (2) of section 43, a Corporation is deemed to be established for that State under this Act.

Section 20 (5) If any doubt arises as to whether a question is or is not a question of policy, or, if the State Government and the Central Warehousing Corporation give conflicting instructions, the matter shall be referred to the Central Government whose decision thereon shall be final.”

And in support of his argument, he has placed reliance on the judgment given by a Division Bench of the Hon’ble High Court, Lucknow in the case of **UP State Warehousing Corporation & others v. Sunil Kumar Srivastava & others 2013 (5) ALJ 161** relevant paragraph no. 21 on which reliance has been placed, quoted hereunder:

“21. In view of sub-section (2) of Section 18, the Corporation is a body corporate incorporate under the Act. Section 18 gives statutory status to the Warehousing Corporation with the element of autonomy vide AIR 1973 SC 1081 *Shri Ambika Mills Limited No.1 v. The Textile Labour Association, Ahmedabad.*”

Accordingly, learned counsel for claimant request that the preliminary objection, taken by respondent, may kindly be rejected.

I have heard the learned counsel for parties and gone through the record.

Section 2(a) of the Industrial Disputes Act, 1947, reads as hereunder:



“2. (a) “appropriate Government” means— (i) in relation to any industrial dispute concerning any industry carried on by or under the authority of the Central Government, or by a railway company 6[or concerning any such controlled industry as may be specified in this behalf by the Central Government] or in relation to an industrial dispute concerning [a Dock Labour Board established under section 5A of the Dock Workers (Regulation of Employment) Act, 1948 (9 of 1948), or 12[the Industrial Finance Corporation of India Limited formed and registered under the Companies Act, 1956 (1 of 1956)], or the Employees’ State Insurance Corporation established under section 3 of the Employees’ State Insurance Act, 1948 (34 of 1948), or the Board of Trustees constituted under section 3A of the Coal Mines Provident Fund and Miscellaneous Provisions Act, 1948 (46 of 1948), or the Central Board of Trustees and the State Boards of Trustees constituted under section 5A and section 5B, respectively, of the Employees’ Provident Fund and Miscellaneous Provisions Act, 1952 (19 of 1952), or the Life Insurance Corporation of India established under section 3 of the Life Insurance Corporation Act, 1956 (31 of 1956), or 14 [the Oil and Natural Gas Corporation Limited registered under the Companies Act, 1956 (1 of 1956)], or the Deposit Insurance and Credit Guarantee Corporation established under section 3 of the Deposit Insurance and Credit Guarantee Corporation Act, 1961 (47 of 1961), or the Central Warehousing Corporation established under section 3 of the Warehousing Corporations Act, 1962 (58 of 1962), or the Unit Trust of India established under section 3 of the Unit Trust of India Act, 1963 (52 of 1963), or the Food Corporation of India established under section 3 or a Board of Management established for two or more contiguous States under section 16 of the Food Corporations Act, 1964 (37 of 1964), or 1[the Airports Authority of India constituted under section 3 of the Airports Authority of India Act, 1994 (55 of 1994)], or a Regional Rural Bank established under section 3 of the Regional Rural Banks Act, 1976 (21 of 1976), or the Export Credit and Guarantee Corporation Limited or the Industrial Reconstruction Bank of India 2[the National Housing Bank established under section 3 of the National Housing Bank Act, 1987 (53 of 1987)], or [an air transport service, or a banking or an insurance company], a mine, an oil field] [, a Cantonment Board,] or a [major port, any company in which not less than fifty-one per cent. of the paid-up share capital is held by the Central Government, or any corporation, not being a corporation referred to in this clause, established by or under any law made by Parliament, or the Central public sector undertaking, subsidiary companies set up by the principal undertaking and autonomous bodies owned or controlled by the Central Government, the Central Government, and

(ii) in relation to any other industrial dispute, including the State public sector undertaking, subsidiary companies set up by the principal undertaking and autonomous bodies owned or controlled by the State Government, the State Government: Provided that in case of a dispute between a contractor and the contract labour employed through the contractor in any industrial establishment where such dispute first arose, the appropriate Government shall be the Central Government or the State Government, as the case may be, which has control over such industrial establishment,”

In the year 1962, an Act was promulgated known as the Warehousing Corporation Act, 1962 (Act No. ...of 1962) and the main aim and object of the Act was to provide for the incorporation and regulation of corporation for the purpose of warehousing of agricultural products and certain other commodities for other matters connected with it. Further, the section 2 (b) of the Warehousing Corporation Act, 1962 provides as under:

“2 (b) “appropriate Government” means in relation to the Central Warehousing Corporation, the Central Government, and in relation to a State Warehousing Corporation, the State Government;

And section 2 (c) of the Act provides as under:

“2(c) “Central Warehousing Corporation” means the Central Warehousing Corporation established under section 3.”

And section 3 of the Act provides as under:

“3 (1) With effect from such date as the Central Government may, by notification in the Official Gazette, specify in this behalf, the Central Government shall establish a Corporation by the name of the Central Warehousing Corporation which shall be body corporate having perpetual succession and a common seal with power to acquire, hold and dispose of property and to contract, and may, by the said name, sue and be sued.

(2) The head-office of the Central Warehousing Corporation shall be at New Delhi or at such other place as the Central Government may, by notification in the Official Gazette, specify.”

From the material on record the position which emerged out that so far as the Uttar Pradesh Bhandar Nigam is concerned, it has been established by the UP State Government.

At this stage, it is appropriate to take into consideration the law as laid down by the Hon’ble High Court in the case of **UP State Warehousing Corporation & others vs. Sunil Kumar Srivastava & others 2013 (5) ALJ 161** on which the reliance has been placed by the learned counsel for the workman; wherein it has been held as under:

### “STATUTORY PROVISIONS

14. U.P. Warehousing Corporation has been established in pursuance to the Central Act, namely, the Warehousing Corporations Act, 1962 (In short, Act). The Act empowers the State Government to establish its own warehousing corporations to fulfil the requirement and to notify commodity. In view of definition contained in Sections 2(k) and 2(1) of the Act, every Warehousing Corporation shall be deemed to be established under the Act.

Under Section 6 of the Act, the Board of Directors is the highest supervisory body which discharge its obligation with the assistance of the Executive Committee.

Chapter III of the Act deals with the State Warehousing Corporations. Under Section 18 of the Act, the State Government may by notification in Official Gazette with the approval of the Central Warehousing Corporation, establish a Warehousing Corporation for the State. A State Warehousing Corporation shall be a body corporate having perpetual succession and a common seal. For convenience, Section 18 of the Act is reproduced as under:

#### 18. State Warehousing Corporations.

(1) The State Government may, by notification in the Official Gazette and with the approval of the Central Warehousing Corporation, establish a Warehousing Corporation for the State under such name as may be specified in the notification.

(2) A State Warehousing Corporation established under sub-section (1) shall be a body corporate by the name notified under that sub-section, having perpetual succession and a common seal, with power to acquire, hold and dispose of property and to contract, and may, by the said name, sue and be sued.

(3) The head-office of a State Warehousing Corporation shall be at such place within the State as may be notified in the Official Gazette.

(4) Notwithstanding anything contained in sub-sections (1), (2) and (3), it shall not be necessary for the State Government to establish a Corporation under sub-section (1) where, under clause (g) of sub-section (2) of Section 43, a Corporation is deemed to be established for that State under this Act.

Under Section 20 of the Act, it has been provided that the general superintendence and management of the affairs of a State Warehousing Corporation shall vest in the Board of Directors. The Board of Directors shall act on business principles having regard to public interest and shall be guided by such instructions on questions of policy as may be given to them by the State Government or the Central Warehousing Corporation. Sub-section (5) further provides that in case any doubt arises as to whether a question is or is not a question of policy, or, if the State Government and the Central Warehousing Corporation give conflicting instructions, the matter shall be referred to the Central Government whose decision thereon shall be final. For convenience, Section 20 of the Act is reproduced as under:

20.(1) The general superintendence and management of the affairs of a State Warehousing Corporation shall vest in a board of directors which shall consist of the following: namely:

(a) five directors mentioned by the Central Warehousing Corporation, of whom one shall be nominated in consultation with the State Bank and one at least shall be a non-official;

(b) five directors nominated by the State Government; and

(c) a managing director, appointed by the State Government in consultation with the directors referred to in clauses (a) and (b) and with the previous approval of the Central Warehousing Corporation.

(2) The Chairman of the board of directors shall be appointed by the State Government from among the directors of the State Warehousing Corporation with the previous approval of the Central Warehousing Corporation.

(3) The managing director shall-

(a) exercise such powers and perform such duties as the board of directors or the State Warehousing Corporation may entrust or delegate to him; and

(b) receive such salary and allowances as the State Warehousing Corporation may; in consultation with the Central Warehousing Corporation, and with the previous approval of the State Government, fix.

(4) The board of directors shall act on business principles having regard to public interest and shall be guided by such instructions on questions of policy as may be given to them by the State Government or the Central Warehousing Corporation.

(5) If any doubt arises as to whether a question is or is not a question of policy, or, if the State Government and the Central Warehousing Corporation give conflicting instructions, the matter shall be referred to the Central Government whose decision thereon shall be final.

(6) The directors of a State Warehousing Corporation, other than the managing director, shall be entitled to receive by way of remuneration such sums as may be prescribed: Provided that no official director shall be entitled to receive any remuneration other than any allowances admissible to him under the rules regulating his conditions of service.

(7) The term of office of, and the manner of filling casual vacancies among directors shall be such as may be prescribed.

Section 22 of the Act further provides that with the previous approval of the Central Warehousing Corporation, the State Government may remove the Managing Director after providing reasonable opportunity. Under Section 23 of the Act, the State Warehousing Corporation has been empowered to make appointments of employees and other officers in efficient performance of its function. For convenience, Section 23 of the Act is reproduced as under:

23. (1) A State Warehousing Corporation may appoint such officers and other employees as it considers necessary for the efficient performance of its functions.

(2) Every person employed by a State Warehousing Corporation under this Act shall be subject in such conditions of service and shall be entitled to such remuneration as may be determined by regulations made by the Corporation under this Act.

Thus the corporation (Board) may take decision for efficient performance of its function (business) for appointment of employees.

Section 42 of the Act further empowers the Warehousing Corporation to make regulations not inconsistent with the Act and rules for all matters for which the provision is necessary or expedient for the purposes of giving effect to the provisions of the Act which includes condition of service, remuneration etc.

15. The U.P. State Warehousing Corporation has framed its Staff Regulations in pursuance to power conferred by Section 42 of the Act (supra). Clause (e) of Regulation 2 defines the word, 'employee' which includes the employees who are whole time or part time service of the corporation but it does not include employees appointed on contract basis since their service conditions shall be governed by contractual assignment. For convenience Regulation 2(e) is reproduced as under:

2(e) 'Employee' means a person in the whole time or part time service of the corporation but does not include a person employed on daily wages or a person employed on contract in so far as he is governed by the terms of the contract.

Under Regulation 5, the appointing authority has been dealt with. For convenience, it is reproduced as under:

5. Appointing Authority:--Appointments to posts in class II in the scale of Rs. 625-1240 and above shall be made by the Managing Director and appointments to the posts in class II and III below the pay-scale of Rs. 625-1240 shall be made by the Deputy Managing Director. Appointment to the posts other than that of Managing Director, shall be made by the Executive Committee. The appointment of Managing Director shall be made in accordance with the provisions of Section 20(i)(c) of the Warehousing Corporations Act, 1962 (53 of 1962).

Regulation 11 empowers the appointing authority to remove the services of the employees giving one month notice appointed on temporary basis. For convenience, Regulation 11 is reproduced as under:

11. Termination of service:

(1) The services of an employee of any class who is temporary may be terminated by the appointing authority at any time by giving him one month's notice or pay in lieu thereof.

(2) The services of a permanent employee of the corporation can be terminated by the appointing authority only after apprising the employee of the reasons there for, asking him to furnish any explanation that he may like to offer and after considering the explanation and giving him a final notice to show-cause against the proposed termination.

The absence of any provision in regulation with regard to daily wagers does not stop the Board of Directors to amend regulations or formulate Scheme for daily wagers in business interest.

## INTERPRETATION

16. Hon'ble Single Judge, by the impugned judgment held that the Board of Directors being the highest administrative and supervisory body is conferred power to take a decision and the matter could not have been referred to the State Government with regard to approval for regularisation. It is held that once a decision is taken for regularisation of the services by the Board, then that should be implemented in letter and spirit. The Government lacks jurisdiction to approve or disapprove the decision of the Board of Directors.

17. Mr. J.N. Mathur, learned Senior Advocate appearing for the appellant corporation submits that the Board of Directors has rightly referred the matter to the State Government which is the competent authority to approve or disapprove its decision. Submission of the learned Senior counsel is that the decision of the Board of Directors could not have been implemented in regularisation of services without approval of the State Government and once the State Government disapproves, the corporation cannot regularise the services. The learned counsel for the corporation as well as the State of U.P. are impressed upon from the word, 'policy' used in sub-section (4) of Section 20 of the Act (supra).

18. Virtually, policy decision means a conscious decision taken by the Government for the management of public affairs. The policy decision shall be a decision taken by the Government for management of public affairs. The policy decision shall be a decision 'in rem' and not 'in personam'.

The aforesaid proposition seems to be fortified by sub-section (5) of Section 20 (supra) which provides that in the event of difference between the State Government and the Central Warehousing Corporation with regard to a policy, the matter shall be referred to the Central Government. Sub-section (4) and Sub-section (5) of Section 5 should be read conjointly and not in isolation.

19. Emphasis given by the learned counsel for the corporation and the State Government to Sub-section (4) without taking note of Sub-section (5) does not seem to be sustainable. It is well-settled proposition of law that while interpreting the statutory provision, a meaning should be given to word by word, line by line and section by section and the Act (statute) as a whole vide *Grasim Industries Limited v. Collector of Customs*, 2002 (4) SCC 297; *Easland Combines v. CCE*, 2003 SCC (1) 410; *A.N. Roy v. Suresh Sham Singh*, 2006 (5) SCC 745 and *Deewan Singh v. Rajendra Prasad Ardevi*, 2007 (10) SCC 528.

20. In case sub-section (4) of Section 5 is read conjointly, with sub-section (5) then at the face of record, the word, "policy" should be interpreted as a general order or direction passed by the State Government taking a policy decision with regard to particular matter in public interest. Sub-section (4) and (5) does not permit the State Government to interfere with day to day functioning of the corporation.

21. In view of sub-section (2) of Section 18, the corporation is a body corporate incorporate under the Act. Section 18 gives statutory status to the Warehousing Corporation with the element of autonomy vide *Shri Ambika Mills Limited No. 1 v. The Textile Labour Association*, Ahmedabad, MANU/SC/0440/1972 : AIR 1973 SC 1081.

22. Their Lordships of Hon'ble Supreme Court while considering the essential elements in the legal concept of corporation in a case in *S.P. Mittal v. Union of India*, AIR 1982 SC 70, held as under:

...the essential elements in the legal concept of a corporation are (sic)(1) a continuous identity, i.e. the Original member or members or his or their successors are one, (2) the persons to be incorporated, (3) the name by which the persons are incorporated, (4) a place, and (5) words sufficient in law to show incorporation.

23. A corporation is a legal person just as much as an individual. A corporation aggregate can express its will by deed under a common seal.

24. In a case in *Devi Doyal Marwah v. State of U.P.*, AIR 1963 AP 479, while considering the difference between the corporation and the Department of the Government, it has been held that the distinguishing feature will be whether the undertaking functions as a responsible independent organisation and not as a part of any department of the State. Other test would be to see whether it is not issued with capacity to contract obligations and are being sued or be sued.

25. Admittedly, under the Act, the corporation possess autonomy with regard to business subject to rider contained in Section 20 (supra). Section 11 of the Act empowers the Central Warehousing Corporation to acquire property and do all needful to run its business. Section 24 of the Act empowers the State Warehousing Corporation also to acquire property. For convenience, Section 24 is reproduced as under:

24. Subject to the provisions of this Act, a State Warehousing Corporation may-

- (a) acquire and build godowns and warehouses at such places within the State as it may, with the previous approval of the central Warehousing Corporation, determine;
- (b) run warehouses in the State for the storage of agricultural produce, seeds, manures, fertilizers, agricultural implements and notified commodities;
- (e) arrange facilities for the transport of agricultural produce, seeds, manures, fertilizers, agricultural implements and notified commodities to and from warehouse;
- (d) act as an agent of the Central Warehousing Corporation or of the Government for the purposes of the purchase, sale, storage and distribution of agricultural produce, seeds, manures, fertilizers, agricultural implements and notified commodities; and
- (e) carry out such other functions as may be prescribed.

26. Sections 26 and 27 further empower the State Warehousing Corporation to take a decision with regard to financial aspect. For convenience, Sections 26 and 27 are reproduced as under:

26. (1) Every Warehousing Corporation shall prepare before the commencement of each year a statement of programme of its activities during the forthcoming year as well as a financial estimate in respect thereof.

(2) A statement prepared under sub-section (1) shall, not later than three months before the commencement of each year, be submitted for approval--

(a) in the case of the Central Warehousing Corporation, to the Central Government;

(b) in the case of a State Warehousing Corporation, to the Central Warehousing Corporation and the State Government.

(3) The statement and the financial estimate of a Warehousing Corporation referred to in sub-section (1) may, with the approval of the Central Government in the case of the Central Warehousing Corporation, or with the approval of the Central Warehousing Corporation and the State Government in the case of a State Warehousing Corporation, be revised by the Warehousing Corporation.

27(A) A Warehousing Corporation may, in consultation with the Reserve Bank and with the previous approval of the appropriate Government, issue and sell bonds and debentures carrying interest for the purpose of raising funds: Provided that the total amount of bonds and debentures issued and outstanding and of the other borrowings of the Corporation shall not at any time exceed ten times the amount of the paid-up share capital and the reserve fund of the Corporation.

(2) A Warehousing Corporation may, for the purpose of carrying out its functions under this Act, borrow money--

(i) from the Reserve Bank, or

(ii) from the State Bank, for such periods for which, and upon any of the securities against which, it is authorised to advance and lend moneys, under the provisions of 1 [the State Bank of India Act, 1955 (23 of 1955), or]

(iii) from any nationalised bank, or

(iv) from such insurance company, investment trust or other financial institution as may be approved by the Central Government in this behalf.]

(3) Subject to the proviso to subsection (1), the Central Warehousing Corporation may borrow money from the Central Government and a State Warehousing Corporation may borrow money from the State Government and the Central Warehousing Corporation on such securities and on such terms and conditions as may be agreed upon between the borrowing corporation and the lender, in each case.

(4) The bonds and debentures of a Warehousing Corporation may be guaranteed by the appropriate Government as to the repayment of principal and the payment of interest at such rate as may be fixed by the appropriate Government on the recommendation of the board of directors of the Corporation at the time the bonds or debentures are issued.

27. Sections 30 and 31 further provides to establish a reserve fund out of its annual net profit and maintain proper account. For convenience Sections 30 and 31 are reproduced as under:

30(1) Every Warehousing Corporation shall establish a reserve fund out of its annual net profits.

(2) After making provision for bad and doubtful debts, depreciation on assets and all other matters which are usually provided for by companies registered and incorporated under the Companies Act, 1956 (1 of 1956), a Warehousing Corporation may, out of its net annual profits, declare a dividend: Provided that for so long as

*the reserve fund is less than the paid-up share capital of the Central Warehousing Corporation and until there has been repaid to the Central Government such sum, if any, as that Government may have paid under a guarantee given in pursuance of sub-section (1) of Section 5 or sub-section (4) of Section 27, the rate of such dividend, in the case of the Central Warehousing Corporation, shall not exceed the rate guaranteed by the Central Government under sub-section (1) of Section 5.*

*31. (1) Every Warehousing Corporation shall maintain proper accounts and other relevant records and prepare an annual statement of accounts including the profit and loss account and the balance sheet in such form as may be prescribed: Provided that, in the case of the Central Warehousing Corporation, the accounts relating to the Warehousing Fund and the General Fund shall be maintained separately.*

*(2) The accounts of a Warehousing Corporation shall be audited by an auditor duly qualified to act as an auditor of companies under Section 226 of the Companies Act, 1956 (1 of 1956).*

*(3) The said auditor shall be appointed by the appropriate Government on the advice of the Comptroller and Auditor-General of India.*

*(4) The auditor shall be supplied with a copy of the annual balance sheet and the profit and loss account of the Warehousing Corporation and it shall be his duty to examine them together with the accounts and vouchers relating thereto, and he shall have a list delivered to him of all books kept by the Corporation and shall at all reasonable times have access to the books, accounts and other documents of the Corporation and may require from any officer of the Corporation such information and explanations as the auditor may think necessary for the performance of his duties as auditor.*

*(5) The auditor shall make a report to the share-holders on the accounts examined by him and on the annual balance sheet and the profit and loss account and in every such report, he shall state whether in his opinion the accounts give a true and fair view--*

*(a) in the case of the balance sheet, of the state of the Corporation's affairs at the end of its financial year, and*

*(b) in the case of the profit and loss account, of the profit or loss for its financial year, and in case he has called for any explanation or information from the officers, whether it has been given and whether it is satisfactory.*

*(6) The appropriate Government may, after consultation with the Comptroller and Auditor-General of India at any time issue directions to the auditor requiring him to report to the appropriate Government upon the adequacy of measures taken by a Warehousing Corporation for the protection of its share-holders and creditors or upon the sufficiency of his procedure in auditing the accounts of the Corporation and may enlarge or extend the scope of the audit or direct that a different procedure in audit may be adopted or direct that any other examination may be made by the auditor if in the opinion of the appropriate Government public interest so requires.*

*(7) A Warehousing Corporation shall send a copy of every report of the auditor to the Comptroller and Auditor-General of India and to the Central Government at least one month before it is placed before the shareholders.*

*(8) Notwithstanding anything hereinbefore contained in this section, the Comptroller and Auditor-General of India may, either of his own motion or on a request received in this behalf from the appropriate Government, undertake in respect of a Warehousing Corporation such audit and at such time as he may consider necessary: Provided that where the Central Government is required to make any payment on account of the guarantee given by it under sub-section (1) of Section 5, such audit shall be undertaken by the Comptroller and Auditor-General of India or any person authorised by him in this behalf.*

*(9) The Comptroller and Auditor-General of India and any person authorised by him in connection with the audit of the accounts of a Warehousing Corporation shall have the same rights, privileges and authority in connection with such audit as the Comptroller and Auditor-General has in connection with the audit of Government accounts and in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect the office of the Corporation.*

*(10). The annual accounts of a Warehousing Corporation together with the audit report thereon shall be placed before the annual general meeting of the Corporation within six months of the close of the financial year.*

*(11) Every audit report under this section shall be forwarded to the appropriate Government within a month of its being placed before the annual general meeting and that Government shall as soon thereafter as may be cause the same to be laid before both Houses of Parliament or the Legislature of the State, as the case may be.*

31A. 1 [Returns and reports. A Warehousing Corporation shall furnish to the appropriate Government such returns, statistics, accounts and other information with respect to its property or activities as that Government may, from time to time, require.]

28. Keeping in view the definition of corporation and statutory provisions (supra), there appears to be no room of doubt that the appellant corporation possess autonomy and its business is regulated in pursuance to statutory power conferred by the Act and Regulations framed thereunder. It also possess autonomy to make appointment and deal with the service conditions of its employees (Section 23). The decision with regard to commercial matters or with regard to services of employees may not be subject-matter for approval or disapproval for the State Government. Of course, in case the Government takes a policy decision and circulate the same subject to rider contained in sub-section (5) of Section 20, the corporation shall be abide by such policy decision. The corporation owes its origin and birth to the Act and not established in compliance of certain orders or decision taken by the State Government through its Cabinet. The corporation has right to discharge its statutory obligations through its authorities created under the Act. The State Government lacks jurisdiction to interfere with the individual decision taken by the corporation through its Board of Directors to manage its affairs or its day to day working in business interest."

And in para 64 of said judgment it was held as under:

"64. In view of above, the impugned judgment and order passed by Hon'ble Single Judge requires no interference on merit but it requires some modification in terms of the finding recorded hereinafter:

(I) Policy decision means a decision in Rem, not in Personam.

(II) Sub-section (4) of Section 20 may not be read in isolation but it should be read conjointly alongwith sub-section (5) of Section 20 of the Act which provides that in the event of conflict with regard to the question of policy between the Central and State Warehousing Corporation, the matter shall be referred to the Central Government whose decision shall be final. A conjoint reading of sub-section (4) and sub-section (5) of Section 20 reveals that the policy decision should be pre-existing policy regulating an issue. In absence of any pre-existing policy decision, that too keeping in view Section 23 of the Act, the Board of Directors is empowered to take decision with regard to recruitment and appointment of its officers and staff, regulate service conditions.

Whether the Government has got right to regulate the service conditions of the Corporation by taking a policy decision under the teeth of Section 23 of the Act is a question, which we leave open in case raised in appropriate case.

(III) Statutory corporations are autonomous bodies to some extent and the Government lacks jurisdiction to interfere in their day to day functioning. Statutory corporations are juristic personality and they may sue and may be sued. Being legal entity, they have right to discharge their obligations in accordance with statutory provisions. The Government lacks jurisdiction to interfere in their day to day functioning.-

(IV) Under Section 23 of the Act, the appellant U.P. Warehousing Corporation has got right to make appointment of officers and employees. A decision to fill up the vacancies in accordance with rules is to be taken by the Corporation itself and the Government has not been conferred power under the Act to interfere in the matter.

Of course, the Corporation while taking a decision to make recruitment of officers and employees has to abide by law. Instead of sending the matter to the State Government for seeking approval for regularisation, the Board of Directors should have taken a decision on its own within the four corners of Section 23. Appropriate Scheme or regulation should have been framed by the Board of Directors for regularisation and continuance of almost 2000 respondent employees working since more than decade.

(V) Since out of 55 posts, 30 posts have been reserved leaving 25 posts for general category, the impugned advertisement suffers from the vice of arbitrariness in view of settled principle of law (supra).

In view of above, all the special appeals deserve to be and are dismissed on merit. The impugned judgment and order is affirmed with the modification that it shall be open for the Board of Directors of the appellant State Warehousing Corporation to take a fresh decision with regard to fate of the respondent employees and to fill up the vacancies by fresh advertisement keeping in view the observation made in the body of judgment."

Reverting to the facts of the present case, from the material on record, the position which emerged out that the in para 3 of the claim petition, it is stated as under:

"3. That the opposite party No.1 is created under section-18 of the Warehousing Corporation Act, 1962 which is a Parliamentary Act, thus comes within the jurisdiction of the Hon'ble Authority. Under section-19(2) of the Act, 50% of the share-holding of the U.P. State Warehousing Corporation was subscribed by the State Government whereas rest 50% of the share-holding was provided by the Fur Central Warehousing Corporation. Further, under section- 20(4) the Board of Directions of the State Warehousing Corporation shall act on business principles having regard in public interest and shall be guided by such instructions on questions of policy as may be given to them by the State Government or the Central Warehousing

*Corporation. In case of any difference of opinion between the Central Warehousing Corporation and State Warehousing Corporation, such difference shall be referred to the Central Government under section-35 of the Warehousing Corporation Act, 1962. Conjoined reading of the above provisions make it clear that "Central Government" would be the appropriate authority so far as the opposite party no.-1 is concerned."*

And the parties which are made, in the present case as under:

1. *U.P. State Warehousing Corporation, "Bhandaran Bhawan, New Hyderabad, Lucknow through its Managing Director.*
2. *Managing Director, U.P. State Warehousing Corporation, "Bhandaran Bhawan" New Hyderabad, Lucknow.*
3. *Deputy Managing Director, U.P. State Warehousing Corporation, "Bhandaran Bhawan" New Hyderabad, Lucknow."*

Moreover, on behalf of the claimant, list of documents has been filed before this Tribunal (W-19) and in the said list, the document is annexed as annexure no. 2, in respect to engagement of Sri Shyam Mohan Mishra in UP Rajya Bhandar Nigam, issued by Dy. Manager, UP State Warehousing Corporation, Lucknow.

Taking into consideration the said document and the documents annexed by claimant along with list of document, it clearly establish/prove that he is under control of authorities of UP Rajya Bhandar Nigam, Lucknow while discharging his duties in the UP State Warehousing Corporation.

Further, Hon'ble Allahabad High Court, in Civil Writ Petition No. 7621 (SS) of 2008 Ram Naresh & others v. State of UP & others and other connected matters, held as under:

*"The petitioners are the employees of the State Warehousing Corporation, State of U.P. They are deployed at different districts in the whole State. They belong to different categories viz. Technical Assistants, Accountants, Group 'C' and Group 'D' posts. They have come forward to lodge their claim of regularization through different set of writ petitions by challenging the advertisement issued for regular recruitment as well as the order passed by the State Government, rejecting their claim of regularization.*

*Since common questions are involved for determination in all the writ petitions the description of writ petitions alongwith total number of petitioners in each and every petition and categories of employees are mentioned here-in-below:-*

Sl. No	W.P. No.	Party name	Total writ petitions	Group 'C' empl-oyees	Group 'D' Empl-oyees
1	7621 of 2008	Ram Naresh & others	60	15	45
2	8020 of 2008	Mahesh Prasad Tripathi & others	19	8	11
3	480 of 2009	Manoj Kumar Sirothi & others	8	8	
4	2628 of 2009	Anil Kumar & others	67	7	60
5	486 of 2009	Salman Ahmed & others	43		43
6	483 of 2009	Harish Chandra Joshi & others	13		13
7	504 of 2009	Mukteshwar Sharma & others	6	5	1
8	488 of 2009	Vipin Kumar Arora & others	5	5	
9	2627 of 2009	Rajesh Kumar Arora & others	32	32 (Tech. Asstt.	
10	2630 of 2009	Sunil Srivastava & others	1	1 (Acco- untant)	
		<b>Total</b>	<b>254</b>	<b>81</b>	<b>173</b>

*Some of the petitioners have completed their tenure of service more than ten years. Some are reaching that stage. Since several years they have been seeking their regularization before the competent authority, but they did not come forward to lodge their claim to the court of law, but when the advertisement proceeded for regular recruitment in different categories, they came forward to challenge the same, which is before this court.*



*The services of the petitioners are regulated by the U.P. State Warehousing Corporation Staff Regulations, which have been framed in exercise of power conferred by Section 42 of the Warehousing Corporation Act, 1962. By way of Section 42 of the Warehousing Corporation Act, 1962 (in short 'Act') the Warehousing Corporation has been authorized to make regulations for the purpose of giving effect to the provisions of the Act, which may provide the conditions of service and remuneration payable to the officers and other employees of the Corporation etc. The regulation 3 speaks that they shall apply to all employees of the corporation and to the personnel employed on contract in respect of all matters not regulated by the contract.*

*Regulation 2 (e) defines the term 'Employee' as under:-*

*"(e) 'Employee' means a person in the whole time or part time on daily wages or a person employed on contract in so far as he is governed by the terms of the contract."*

*Regulation 4 speaks for strength of staff. It provides that the Board of Directors shall, from time to time, determine the strength of the staff both permanent and temporary under various categories required for carrying out its functions: Provided that the Managing Director may subject to the approval of the Executive Committee create any post in class II or class III for a period not exceeding six months.*

*Regulation 5 speaks for appointing authority. It provides that Appointments to posts in class II in the scale of Rs.625-1240 and above shall be made by the Managing Director and appointments to the posts in class II and III below the pay scale of Rs.625-1240 shall be made by the Deputy Managing Director. Appointment to the posts other than that of Managing Director, shall be made by the Executive Committee. The appointment of Managing Director shall be made in accordance with the provisions of Section 20(i)(c) of the Warehousing Corporations Act, 1962.*

*The State Warehousing Corporation has been defined under Section 2(k) of the Warehousing Corporations Act, 1962 as under:-*

*"2.(k) 'State Warehousing Corporation' means a Warehousing Corporation for a State established or deemed to be established under this Act.*

*Section 18 of the Act authorizes the State government to establish a Warehousing Corporation for a State with the approval of the Central Warehousing Corporation. It shall be a body corporate.*

*Section 20 of the Act empowers the Board of Directors to get general superintendence and management of the affairs of the Corporation as well as the constitution of the Board of Directors. Section 20 is extracted below:-*

*"20.(1) The general superintendence and management of the affairs of a State Warehousing Corporation shall vest in a board of directors which shall consist of the following:namely:-*

- (a) *five directors mentioned by the Central Warehousing Corporation, of whom one shall be nominated in consultation with the State Bank and one at least shall be a non-official;*
- (b) *five directors nominated by the State Government; and*
- (c) *a managing director, appointed by the State Government in consultation with the directors referred to in clauses (a) and (b) and with the previous approval of the Central Warehousing Corporation.*
- (2) *The Chairman of the board of directors shall be appointed by the State Government from among the directors of the State Warehousing Corporation with the previous approval of the Central Warehousing Corporation.*
- (3) *The managing director shall-*
  - (a) *exercise such powers and perform such duties as the board of directors or the State Warehousing Corporation may entrust or delegate to him; and*
  - (b) *receive such salary and allowances as the State Warehousing Corporation may; in consultation with the Central Warehousing Corporation, and with the previous approval of the State Government, fix.*
- (4) *The board of directors shall act on business principles having regard to public interest and shall be guided by such instructions on questions of policy as may be given to them by the State Government or the Central Warehousing Corporation.*
- (5) *If any doubt arises as to whether a question is or is not a question of policy, or, if the State Government and the Central Warehousing Corporation give conflicting instructions,*

*the matter shall be referred to the Central Government whose decision thereon shall be final.*

- (6) *The directors of a State Warehousing Corporation, other than the managing director, shall be entitled to receive by way of remuneration such sums as may be prescribed: Provided that no official director shall be entitled to receive any remuneration other than any allowances admissible to him under the rules regulating his conditions of service.*
- (7) *The term of office of, and the manner of filling casual vacancies among directors shall be such as may be prescribed."*

*Section 23 authorizes the State Warehousing Corporation to appoint officers and employees. It is extracted below:-*

*"23. (1) A State Warehousing Corporation may appoint such officers and other employees as it considers necessary for the efficient performance of its functions.*

*(2) Every person employed by a State Warehousing Corporation under this Act shall be subject in such conditions of service and shall be entitled to such remuneration as may be determined by regulations made by the Corporation under this Act.*

*Section 35 provides that if there is any difference of opinion between the Central Warehousing Corporation and a State Warehousing Corporation regarding their respective functions and powers under this Act, such difference shall be referred to the Central Government, whose decision thereon shall be final.*

*The Warehousing Corporation (Amendment) Act, 2001 as amended in Section 20 as under:-*

*In Section 20 of principal Act.-*

*(a) in sub-section (1), in clause (e), for the words "with the previous approval of", the words "under intimation to" shall be substituted;*

*(b) in sub-section (2), for the words "with the previous approval of", the words "under intimation to" shall be substituted.*

*The petitioners' grievance is that once they are working in their regular establishment of the Corporation (in short 'Corporation'), against the substantive vacancies, there is no question to fill the posts through fresh recruitment by means of advertisement impugned. They also claimed their regularization under the U.P. Regularization of Daily Wages Appointment of Group 'D' posts, 1998 as well as U.P. Regularization of Daily Wages Appointments, 2001. It is stated that the nature of duties and responsibilities of all the petitioners are of such a grave nature that they have to be all times alert in 365 days and 24 hours in each and every Godowns established in the whole State of U.P. by the Corporation. They are assigned the duties to properly maintain the Godowns, keeps the food grains, give them insecticides in time and providing help in transportation of food grains through Railway racks from one to another place by uploading and downloading both. It is stated that the Corporation is profit generating department of State as the profit of Corporation is increasing every year. It is stated that so many times the Corporation took decision to regularize their services, but due to political interference the decision of the Corporation could not attained finality. The posts of Chairman and Managing Directors are held by political appointments and thus are exercised for political ends. Many times the employees agitating for their demand of regularization by way of lawful demonstration, like 'Dharna and Pradarshan'. Number of decisions of the Board of Directors have been brought on record for regularization of the petitioners, but the same could not attained the finality and ultimately the State Government has turned down the decision. It is stated by the petitioners that once the Board of Directors, who is the competent authority took a decision for regularization, the interference of the State Government is unwarranted being without jurisdiction.*

*It is stated by the petitioners that the Board of Directors has extended all benefits to the petitioners like regular employees as they are entitled to enjoy weekly holidays, national holidays, their dearness allowance is enhanced after every six months, their salary is being paid through cheques for which they held accounts in the National Banks. Though they are working continuously since long, but just to deny their right of regularization, two days artificial break after every 89 days are being given. Their work is regular, they are transferred as regular staff from one to another city for which travelling allowance is paid, but they are permitted to sign in separate register. Several times some of the senior employees have been handed over charge to run the center independently.*

*It is also stated by the petitioners that the petitioners have been engaged by the competent authority under the Rules, may be on consolidated wages, but there is no violation of any procedure for appointment. The regularization do not prescribe any procedure for appointment. Only the appointing authority is prescribed and once the appointments have been made by the appointing authority, the mode and manner of*

appointment is meaningless. It is also stated that the advertisement in question is without approval by the Board of Directors. As on 1<sup>st</sup> of April, 2010 against the total sanctioned strength i.e. 2140, the total 1491 employees are working and 649 posts are still vacant. For the post of Technical Assistant, 19 posts are sanctioned, against which 17 persons are working and two posts are vacant. In class IV employees total sanctioned posts are 540, against which 340 employees are working and 200 posts are vacant. For the post of typist, total sanctioned posts are 15, out of which 13 employees are working, two posts are still vacant. For the Junior Office Assistant, total sanctioned strength is 198, out of which 139 employees are working and 59 posts are vacant.

On the other hand, in reply the learned counsel for the Corporation stated that though the work of the Corporation is managed by its regular staff at the Depots, but when harvesting of crops and its purchase at the center need extra working hands, then casual staff like the petitioners are engaged. These casual workers depends on the quantity of work available. They work either till the cession of work or for the definite period for which they are engaged. Thereafter their engagement automatically stands exhausted. The petitioners were not engaged under the appointment letters. No mode of recruitment was adopted for engaging them, as such the petitioners have no legal right to claim for their regularization. They are working on casual basis. The casual labours are getting Rs.102.43 per day. The casual clerks are getting Rs.129.63 per day, as is prescribed under the minimum wages Act. The appointing authority for the post of Peon and Chowkidar is the Regional Manager of the Region. The appointing authority for the post of Junior Clerk is the Deputy Managing Director of the Corporation, but the petitioners were engaged by the Center incharge of that particular center without approval of the Regional Manager. Thus, they were not appointed by the appointing authority nor the procedure prescribed for selection has been adopted as neither any selection Committee was constituted nor was advertised the vacancies. Moreover, they were not engaged against any sanctioned post.

The sanctioned posts of Peons and Chowkidars in the Corporation are 504, against which 451 persons are working. Thus, only 89 posts are vacant. However, strength of working casual laborers is 935 in number. Similarly, sanctioned posts of Junior Clerks are 198, 50% of which is to be filled up from direct recruitment and 50% from promotion, against which only 64 posts are vacant. However, the casual clerks are working 449 in number. The Corporation has shown full sympathy for the petitioners as the weightage of their past services has been given in the process of recruitment, as has been asked by this court also in the earlier matter i.e. writ petition No.7513 (SS) of 2008.

The allegation of political interference has been said to be false and have been denied. The State Government has also come forward to file counter affidavit, just to defend its order passed on 17<sup>th</sup> of April, 2009, whereby the petitioners' regularization has been rejected on two folds; firstly the regularization Rules framed by the State Government, either it belongs to Group 'C' or Group 'D' employees, are not applicable to the employees of the Corporation as the same has not been adopted by the Corporation, therefore, it is stated that the petitioners cannot take benefit of regularization under those Rules. Secondly the decision of the Hon'ble Supreme Court rendered in the case of **Secretary, State of Karnataka versus Uma Devi (3), reported in 2006 (4) SCC 1** negates such regularization. Though it is stated by the Government that the State Government never interferes in the functioning of the Corporation as well as in the decision of the Board of Directors, but since the decision regarding the petitioners regularization is a policy matter, the State Government has interfered with in the decision, as it is only the State Government which is empowered to take a policy decision, not the Corporate bodies.

Though several letters had been brought on record by the petitioners to establish their claim of regularization on the basis of profit being earned by the Corporation with their efforts, but one letter dated 8<sup>th</sup> of June, 2005, which is very much relevant, is being referred herein, through which the Corporation has intimated to the Government that the Corporation is in a profiteering position continuously since last ten years. In 1994 the total sanctioned strength by the State Government of the Corporation was 2140. At that time the capacity of storage of the Corporation was 7.94 lack metric tonne, whereas Corporation has improved its qualitative work and now its storage capacity is 28 metric tonne, thus the capacity of storage has increased to 256 per cent. The strength of the employees are unable to handle the work of the Corporation. The Board of Directors in its meeting dated 6<sup>th</sup> of December, 2004 took a decision to increase the strength of staff to 3291 posts. It also described the statistics of profit as under:-

Sl.No.	Year	Net Profit (in lakhs)
1	1994-1995	284.34
2	199501996	547.44
3	1996-1997	206.04
4	1997-1998	224.68
5	1998-1999	888.93

6	1999-2000	1656.13
7	2000-2001	2499.02
8	2001-2002	3016.26
9	2002-2003	1113.46
10	2003-2004	973.49

After the aforesaid period in financial year 2004-2005 the profit was accepted to Rs.1447.52 lakh. It reserves Rs.9320.65 lac as surplus amount. It was also stated that for the purpose of its income and expenditure the Corporation is not depending on others and there is no need of financial assistance from the Government of India to function the Corporation. It is also stated that by increasing the strength, there would be no financial burden over the State Government. It also recommended to increase the age of retirement.

One application for production of record being application No.48049 (w) of 2010 has been brought on record. Mostly those are decisions of the Board of Directors for the regularization of petitioners, but since these facts are not denied by the respondents, I do not feel it appropriate to call for the records, therefore, it is rejected.

One C.M. Application No.109967 (w) of 2010 has been moved for impleadment by Mr.Rajendra Kumar Chaubey and Mr.Avadehsh Kumar through Mr.Samir Kalia, learned Advocate. The applicants are declared successful candidates. Appointment letters were issued to them, pursuant to which they had also submitted their joining. However, since the order passed by this court, pursuant to which their results were declared, has been stayed by the Division Bench of this court in the Special Appeal, the applicants cannot claim their right to stand in the way of petitioners' claim, therefore, their application is absolutely irrelevant for the purpose of decision of the case and the same is rejected.

One application being application No.114443 of 2008 to initiate proceeding for perjury committed by Shri Mahendra Nath Sharma has been filed by the petitioners. They claim that the respondents have suppressed the true facts as the advertisement shows only 146 vacancies of Group 'D' employees, but they are proceeding for selection against 2140 vacancies. They have also invited the attention of this court towards the statement of some political persons as well as to the political decisions. However, I am of the view that once it is admitted fact that total strength of the employees in the Corporation is only 2140, the recruitment can be made only against the posts, which are vacant on the date of advertisement, therefore, treating the said application as baseless, it is rejected.

It is admitted by the respondents that seven messengers, two motor drivers and one electrician, total ten employees, who were working on consolidated pay, have been regularized within the sanctioned strength by the State Government on 27<sup>th</sup> of December, 1995. One Suresh Kumar Yadav has been regularized, even after the decision of **Uma Devi's case** (Supra) on 17<sup>th</sup> of May, 1996. Though the government order dated 8<sup>th</sup> of September, 2010, whereby the State has proposed to extend the benefit of regularization to some of the daily wages employees, has been issued, but that is still subject to financial concurrence and it is stated by the State Government that even if it is implemented, the petitioners shall not get any benefit of it.

The petitioners have based their claim of regularization on the basis of judicial pronouncements also, particularly, the decision of Hon'ble Supreme Court rendered in the case of **State of U.P. Versus Putti Lal, reported in 2002 (2) UPLBEC 1595**. According to the learned counsel for the petitioners as per aforesaid decision, the regularization of Daily Wages employees, are permissible under the law, therefore, the Hon'ble Supreme Court directed the State Government to frame the Rules for regularization. To some extent he also placed reliance upon the decision of **State of Karnataka versus Uma Devi** (Supra) and submitted that after ten years continuous service on daily wages, the Hon'ble Supreme Court has permitted the regularization.

Since the State Government has rejected the petitioners' regularization basically on the strength of Hon'ble Supreme Court decision rendered in the case of **Secretary, State of Karnataka, versus Uma Devi (3) and others**, (Supra), it is appropriate to discuss the aforesaid judgment at this stage itself. In this case there were two sets of appeals; in one set, the respondents who were temporarily inducted on daily wages in the commercial tax department, they claimed that since they have worked in the department more than ten years, hence they are entitled to be made permanent employees of the department as well as entitled to all the benefits of regular employees. The second set of appeals related to the employees who challenged the cancellation of their appointments. Here I am concerned only with the first set of appellants seeking regularization. The Hon'ble Supreme Court recognized the right of Union as well as the State Government to engage persons temporarily or on daily wages basis to meet the ends of situation with the observation that such engagements cannot be used to defeat the very scheme of public employment. The Hon'ble Supreme

Court held that once this right of the government is recognized and the mandate of the constitutional requirement for public employment is respected, there cannot be much difficulty in coming to the conclusion that it is ordinarily not proper for the courts, who are guided under Article 226 of the Constitution of India or under Article 32 of the Constitution, to direct absorption in permanent employment to those, who have been engaged without following the due process of selection as envisaged by the constitutional scheme. The Hon'ble Supreme Court by considering the financial implications and the economic aspects held that the court ought not to have brought the financial burden on the State by issuing directions for regularization, as such terms may turn counter productive. After making discussions on several judgments rendered on the point of regularization or permanent absorption, the Hon'ble Supreme Court observed as under:-

“33. It is not necessary to notice all the decisions of this Court on this aspect. By and large what emerges is that regular recruitment should be insisted upon, only in a contingency can an ad hoc appointment be made in a permanent vacancy, but the same should soon be followed by a regular recruitment and that appointments to non-available posts should not be taken note of for regularization. The cases directing regularization have mainly proceeded on the basis that having permitted the employee to work for some period, he should be absorbed, without really laying down any law to that effect, after discussing the constitutional scheme for public employment.”

The Hon'ble Supreme Court further observed that the High Court has no jurisdiction to frame a scheme by itself or direct the framing of a scheme for regularization. The relevant observations of the Hon'ble Supreme Court, which are in the form of guidelines are reproduced hereunder:-

“43. Thus, it is clear that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution, a court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirement of Article 14 read with Article 16 of the Constitution. Therefore, consistent with the scheme for public employment, this Court while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued. Similarly, a temporary employee could not claim to be made permanent on the expiry of his term of appointment. It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. It is not open to the court to prevent regular recruitment at the instance of ad hoc employees who by the very nature of their appointment, do not acquire any right. The High Courts acting under Article 226 of the Constitution, should not ordinarily issue directions for absorption, regularization, or permanent continuance unless the recruitment itself was made regularly and in terms of the constitutional scheme. Merely because an employee had continued under cover of an order of the court, which we have described as “litigious employment” in the earlier part of the judgment, he would not be entitled to any right to be absorbed or made permanent in the service. In fact, in such cases, the High Court may not be justified in issuing interim directions, since, after all, if ultimately the employee approaching it is found entitled to relief, it may be possible for it to mould the relief in such a manner that ultimately no prejudice will be caused to him, whereas an interim direction to continue his employment would hold up the regular procedure for selection or impose on the State the burden of paying an employee who is really not required. The courts must be careful in ensuring that they do not interfere unduly with the economic arrangement of its affairs by the State or its instrumentalities or lend themselves the instruments to facilitate the bypassing of the constitutional and statutory mandates.”

The Hon'ble Supreme Court also denied the theory of legitimate expectations who entered into temporary employment or got engagement as a contractual or casual labour and the engagement is not based on a proper selection as recognized by the relevant Rules or procedure and held that the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees.

The Hon'ble Supreme Court further held that there is no fundamental right for those, who have been employed on daily wages or temporary or on contractual basis to claim that they have a right to be absorbed in service. They cannot be said to be holders of a post, since a regular appointment can be made only by making appointments consistent with the requirements of Article 14 and 16 of the Constitution. The right to be treated equally with other employees employed on daily wages, cannot be extended to a claim for equal treatment with those who were regularly employed. That would be treating unequals as equals. It cannot also be relied on to claim a right to be absorbed in service even though they have never been selected in terms of the relevant recruitment Rules.

*The Hon'ble Supreme Court further observed that when the court is approached for relief by way of writ, the court has necessarily to ask itself whether the person before it had any legal right to be enforced. By considering in light of the very clear constitutional scheme, it cannot be said that the employees have been able to establish a legal right to be made permanent even though they have never been appointed in terms of the relevant rules or in adherence of Article 14 and 16 of the Constitution of India.*

*The Hon'ble Supreme court also considered one other aspect that where irregular appointments of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more, but without the intervention of the orders of the court or of Tribunals and permitted the regularization of service of such employees with the observation that the Union of India or the State Government and their instrumentalities should take steps to regularize, as a one time measure, the service of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts, but not under cover of orders of the courts or of Tribunals and should further ensure that regular appointments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wages are being now employed.*

*The Hon'ble Supreme Court further observed as under:-*

*“54. It is also clarified that those decisions which run counter to the principle settled in this decision, or in which directions running counter to what we have held herein, will stand denuded of their status as precedents.”*

*It is not in dispute that the petitioners' services are governed under the U.P. State Warehousing Corporation Staff Regulations. Regulation (3) speaks that they shall apply to all employees of the Corporation and to the personnel employed on contract in respect of all matters not regulated by the contract. The petitioners are working since many years continuously, may be on consolidated wages, but their appointments are not regulated by any contract. Therefore, they are covered under the definition of “employee” as is defined under the regulations. Though it is said that they have been appointed by the Area Managers, but their appointments have been approved by the Board of Directors of the Corporation. The Board of Directors also commended their regularization, therefore, admittedly they are employees of the State Warehousing Corporation, of which the superintendence and management is vested with the Board of Directors.*

*Section 20 (4) of the Warehousing Corporation Act speaks that the Board of Directors shall act on business principles having regard to public interest and shall be guided by such instructions on questions of policy as may be given to them by the State Government or the Central Warehousing Corporation. Thus the activities of the Board of Directors are based on business principles and on the question of business policy, it is guided by the State Government or the Central Government.*

*Upon perusal of the aforesaid provisions, it is obvious that the State has been permitted to interfere in the policy matter relating to the business activities of the Corporation, not in the matter of employment. As the Board of Directors under Regulation (4) of the Regulations itself is empowered to determine the strength of staff, both permanent and temporary, under various categories, required for carrying out its functions, it establishes that it is autonomous body to take independent decisions without being guided by the State Government to carry out its functions properly. It is also not in dispute that the Board of Directors several times took decisions to regularize the employees like petitioners and also to increase strength of staff. It could not obtain the approval of the State Government, but it was sent for approval to the State Government, who denied it under the strength of the judgment of the Hon'ble Supreme Court rendered in the case of **Uma Devi** (Supra). It has also not been denied that 90 per cent permanent staff, who were initially employed on fixed wages, like the petitioners, had been made permanent, which establishes that such practice for regularization is permitted in the department. The Board of Directors is a statutory body, as it is constituted under the Act.*

*The petitioners have never worked under the cover of court's order. With their efforts the financial status of the Corporation has been upgraded to the extent that only from 2 per cent of total annual profit in one financial year, it can bear the expenses incurred out of giving regular appointment to the petitioners. Out of the total staff of the Corporation only 25% staff is permanent staff, whereas 75% staff are employed on fixed wages.*

*Since the Corporation has not opted the regularization Rules framed by the State Government, the petitioners being employees of the Corporation, cannot claim benefit of regularization under the Rules framed by the State Government. The directions issued by the Hon'ble Supreme Court in **Putti Lal's** case (Supra) has also no relevance in light of the observations made in **Uma Devi's** case (Supra).*

*The Hon'ble Supreme Court in the case of **Uma Devi** (Supra), definitely has denied the regularization of the employees, who are daily wages, temporary and on contract basis, but to some extent it permits the regularization of irregular appointments of the employees, who have been working for more than ten years. Under the Regulations no procedure for selection of Group 'D' and Group 'C' posts has been provided, except indicating the appointing authority. Though the appointment is directed to be in consonance of the Constitutional Scheme, as is envisaged under Article 14 and 16 of the Constitution of India, which should be through proper competition, but till the date of judgment of **Uma Devi** (Supra), there were no such guidelines and that is why the Hon'ble Supreme Court itself permitted the one time regularization of the employees, who worked for ten years. Therefore, I am of the view that once no procedure for appointment was prescribed under the Regulations and the petitioners were appointed by the competent authority, may be on fixed wages, but their appointments cannot be said to be illegal appointments and that being so, that cannot be categorized under the term of "illegal appointment".*

*Under the Act the Board of Directors is an Autonomous Body to take a decision in respect of appointment matters as well as to increase the strength of staff. It has own financial resources to bear the expenses for the payment of salary to the regular staff against the whole strength. The State Government has a very limited role of interference in functioning of the Board of Directors that too in the business matter, therefore, I am of the view that the State Government has mis-directed itself to interfere in the matter of appointment treating the same as it relates to policy matters.*

*I am of the considered view that once the Board of Directors took a decision to regularize the petitioners by following the earlier practice prevailing in the department, there was no need to seek approval of Government, even if it sought so, it was only empty formality, the denial of which has no adversial affect upon the decision of the Board. Therefore, I hereby quash the order dated 17<sup>th</sup> of May, 2009, issued by the State Government as well as the Advertisement No.3 dated 13<sup>th</sup> of November, 2008 with liberty to the Board of Directors to implement its own decisions for regularization of the petitioners within a reasonable time.*

*In the aforesaid terms the writ petitions are allowed."*

Thus, in view of above said facts and keeping in view the section 2 (b) of the Warehousing Corporation Act, 1962 which is quoted hereinabove and once again quoted herein below:

*"“2 (b) "appropriate Government" means in relation to the Central Warehousing Corporation, the Central Government, and in relation to a State Warehousing Corporation, the State Government;*

And from material on record/document filed by parties, it is clearly established that present claimant was engaged in the State Warehousing Corporation by the State Government, so, u/s 2(a) of the Industrial Disputes Act, 1947 the central government cannot be 'appropriate government' in respect to the present workman.

Accordingly, the present industrial dispute raised by the worker/Shyam Mohan before this Tribunal is not maintainable, because appropriate government as per section 2 (a) of the Industrial Disputes Act, 1947 is State Government, in respect to the workman/Shyam Mohan Mishra, who was working in the UP State Warehousing Corporation.

### ORDER

For the foregoing reasons the present industrial dispute is dismissed, as not maintainable before this Tribunal, thus, workman is not entitled for any relief; reference is answered accordingly.

Lucknow.  
15th July, 2024

Justice ANIL KUMAR, Presiding Officer

नई दिल्ली, 15 अक्टूबर, 2024

का.आ. 1983.—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ओएनजीसी लिमिटेड के प्रबंधन के संबद्ध नियोजकों और श्री मनोज नौटियाल के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, लखनऊ, पंचाट (रिफरेन्स न.- 45/2004) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 15.10.2024 को प्राप्त हुआ था।

[सं. एल-30012/2/2004-आईआर(एम)]

दिलीप कुमार, अवर सचिव

New Delhi, the 15th October, 2024

S.O. 1983.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (**Reference No. 45/2004**) of the **Central Government Industrial Tribunal cum Labour Court, Lucknow** as shown in the Annexure, in the Industrial dispute between the employers in relation to **ONGC Limited** and **Shri Manoj Nautiyal** which was received along with soft copy of the award by the Central Government on 15.10.2024.

[No. L-30012/2/2004-IR(M)]

DILIP KUMAR, Under Secy.

#### ANNEXURE

#### CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM- LABOUR COURT, LUCKNOW

#### PRESENT

JUSTICE ANIL KUMAR  
PRESIDING OFFICER

**Ref. No. L-30012/2/2004-IR(M) dated 31.03.2004**

**I. D. No. 45 of 2004**

#### BETWEEN

Sri Manoj Nautiyal S/o Sh. Sumer Chand Nautiyal

H. No. 2, R.K. Puram, Adhohiwala, Dehradun

#### AND

The Chairman cum Managing Director, ONGC, Tel Bhawan

Dehradun - 248001

#### AWARD

By means of Order/letter No. L-30012/2/2004-IR(M) dated 31.03.2004 appropriate government referred the following dispute to this Tribunal for adjudication:-

*“Whether the action of the management of ONGC Ltd., Dehradun in terminating the services of Sri Manoj Nautiyal & 8 others (List as Annexure ‘A’) w.e.f. 1.10.2003 and not regularizing them, is just, fair and legal? If not, to which relief the workmen concerned are entitled?”*

In pursuance to the said reference, on behalf of the claimants namely Sharvshri Manoj Nautiyal, Tilak Ram, Raj Kumar, Saheed Ahmed, Raju, Bharat, Raish Ahmed & Sunil Rawat filed their Statement of Claim on 21.7.2004 before this Tribunal and the case as set up by them, in brief, is as under:

- a) Oil & Natural Gas Corporation Ltd. (hereinafter referred to as ONGC) management had illegally terminated the services of the claimants w.e.f. 1.10.2003 by verbally restraining them from performing their routine duties contravening to the provisions of Section 33, 25F, 25T, 25U, 9A, Clause 5(a) (b)



- (d) (f) of The Fifth Schedule of the Industrial Disputes Act 1947. Admittedly neither any notice of termination was given to the claimants by the ONGC management nor were the aforesaid mandatory provisions of Industrial Disputes Act complied with by the Management. The termination of services of the claimants is not only illegal but also non-est in the eye of law as the same was affected without following the prescribed procedure of law, particularly the aforesaid provisions including Section 25F and 33 of the Industrial Disputes Act.
- b) On behalf of claimants it was further stated that they were engaged by the management of ONGC for separate class of work allotted to them and had been given the nomenclature as 'Part Time Ball Pickers'. The applicants fully come within the ambit and scope of definition of 'workmen' as defined under Section 2(s) of the Industrial Disputes Act 1947 and the work is regularly being taken from them from 9:30 to 5:30 P.M. (over 8 to 9 hours).
- c) In the Statement of Claim it was also submitted by the claimants that they are working with the Management since long and had completed 240 days while performing the duties of Ball Pickers. The work and duties is of the same nature which is being discharged by a permanent employee and the same is perennial in nature.
- d) The claimants in their Statement further stated that the main object of ONGC is to provide excellence in sports/games and adventure activities and in order to achieve said object the ONGC management formed various committees time to time headed by its high ranking officers. One of the Committee so constituted is Regional Sports Council which is controlled by the management (P & A) of ONGC but the same has no independence and locus and has to perform his duties as per the direction of the management of ONGC.
- e) In order to the said committee, another committee at Divisional Level was constituted termed as Corporate Sports Division having registered at New Delhi. As per Certified Standing Order dated 15.6.1962 of ONGC management workers in the capacity of temporary employee who has completed 120 days is entitled for regularization. Thus the claimants are also entitled for regularization of their services as they had completed 240 days.
- f) The legal right of the claimants has not been considered by the management of ONGC, as a result of which they have been deprived for regular salary along with D.A., H.R.A., C.C.A., etc. in spite of their repeated requests and reminders for consideration of their case and the matter was under consideration before the Assistant Labour Commissioner, Dehradun and thereafter the claimants were not allowed to work.

And the relief as claimed by claimant/workmen are as under:-

- (i) Direct the ONGC management to reinstate the workers with all consequential benefits back wages and annual increment for the period of illegal termination of the services of claimant workers; and
- (ii) To regularize the services of the claimant workers w.e.f. their respective dates of initial appointment with all consequential benefits; and
- (iii) Direct the management of ONGC to pay equal wages and allowances other service benefits to the claimant workers as is being paid to their regular counterparts working with the management of ONGC performing similar work w.e.f. the date of their initial joining;

ONGC/Management filed its statement of defence, case as set up by respondent, in brief, is as under:

- a) ONGC is a public sector undertaking incorporated under the Companies Act 1956 as a Public Limited Company and the majority shares are held with the Government of India. The terms and conditions of employment and the service conditions of the regular employees working in the ONGC are regulated and governed by the Conduct Discipline and Appeal (CDA) Rules. In the written statement ONGC further pleaded that ONGC is inter-alia striving to provide excellence in Sports/Games and Adventure activities within and outside organization and also supplementing country's efforts for the development of Sports. It is also providing opportunities to employees of organization who participate in Games/Sports and adventure activities and also raising by inducting by inducting reputed national and International level players. Earlier, sports activities were controlled by ONGC Sports Promotion Board and coordinated through Regional Sports Councils. The ONGC Sports Promotion Board was provided Grant-in-Aid by ONGC to conduct sports activities at work centers.
- b) The functionaries of ONGC Sports Promotion Board and Regional Sports Council were nominated. Hence, any person engaged by ONGC Sports Promotional Board and Regional Sports Council are not directly engaged by ONGC. At presently this setup of Regional Sports Council is not in existence. However, now sports activities is centralized at New Delhi and managed by Corporate Sports Division.

- c) Regional Sports Council (Headquarter), Dehradun had engaged 17 Ball Pickers including the applicants on part time basis on payment of honorarium to provide support to Basketball, Volleyball, Hockey, Football teams and Athletes, Tennis Players, Golfers at Dehradun, during their practice and conditioning session which used to continue for 2 to 3 hours daily on week days. The claim made to the persons that they were workmen of ONGC is not correct.
- d) ONGC cannot be a party to the alleged dispute having no master and servant relation with them, in view of the definition given under Section 2(s) of the Industrial Disputes Act 1947. Workmen are part time Ball Pickers and they are being paid wages on honorarium basis as per working performed by them during the practice session/conditioning camps which is 2 to 3 hours. Thus it is totally incorrect and wrong on the part of workmen to plead that they are performing working in the capacity of 8 to 9 hours continuously and the same is perennial in nature. ONGC in his written statement also pleaded that the certified standing orders referred to by the claimants is not applicable to them, as they were not employed by ONGC. They were providing service to the sports teams and players for short duration on as and when required basis. The contentions regarding regularization and wages, benefits at par with regular employees are misconceived and beyond the terms and scope of reference order.
- e) The order of reference under Section 10 is regarding validity of termination and not in respect of regularization. Therefore, the claim of claimants towards regularization is totally misconceived and cannot be gone into the present adjudication proceedings being outside the scope of terms of reference order. The claimants cannot be said to be as workers as ball picking was of temporary nature and their services were required on the basis of availability of work. Their services were utilized on temporary basis by erstwhile Regional Sports Council (headquarters), Dehradun.
- f) The contention of the claimants that they came to known on 8.8.2003 that the management of ONGC was taking steps to dispense with their services and to substitute them by fresh hands, is not correct. On behalf of ONGC it was further pleaded that the claimants must be put to strict proof of their so called and alleged contention regarding their resolution dated 8.8.2003. The so called meeting on 8.8.2003 and the consequent resolution are not in conformity with the mandatory provisions of the Industrial Disputes Act 1947 and the Rules framed thereunder. In the absence of alleged meeting dated 8.8.2003 and the consequent resolution being legal, the claimants no.1, 4, 7, 8 & 9 are not legally competent to sign the pleadings and/or to represent. The claimants, hence, are not legally competent and/or authorized to represent the applicants in the absence of proper and legal authorization.
- g) Accordingly in the written statement it was pleaded by ONGC that workmen do not come within the definition of 'workman' as defined under Section 2(s) of Industrial Disputes Act 1947 as they have not completed 240 days in any calendar year because they are engaged as part time Ball Pickers as per the necessity of work which is not more than 2 to 3 hours on a particular day on complete honorary basis, hence, the claimants are not entitled for any relief and the Statement of claim filed by the claimants is liable to be dismissed.

On 15.02.2005, on behalf of claimants rejoinder and it has been pleaded that ONGC is achieving the aforesaid object by forming various committees/Board from time to time which are formed and headed by its own officers. It is reiterated that earlier the ONGC had constituted Regional Sports Council for the purpose. All the office-bearers of this Council were the high ranking officers of ONGC like Manager (P&A) etc. This Council had no independent existence or locus. It was the part and parcel of ONGC. All through it had only acted for and on behalf of the ONGC management. It was nothing but one of the departments of ONGC. All through it had only acted and for on behalf of ONGC management. It was nothing but one of the departments of ONGC. It is only a few months back that ONGC had dissolved the Council and constituted another Division termed as Corporate Sports Division which again is formed and headed by the high ranking officials of the ONGC. The only difference between the two committees is that the erstwhile committee termed as 'Regional Sports Council' was operating from the Head Office at Dehradun and the present committee i.e. Corporate Sports Division' is operating from the Registered Office at New Delhi. Actually there is no difference between the two and both are fully financed by the ONGC. The committee/board had no independent source of income or independent status. The claimants in their rejoinder stated that as they are discharging the work and duties of part time Ball Picker they come within the definition of 'workman' as per Section 2(s) of the I.D. Act. In their rejoinder it was also stated by the claimants that they had completed 240 days prior to their date of retrenchment of service which is in violation of Section 33 of the I.D. Act and also the mandatory provisions of Section 25-F of the Act was not followed, so the action on the part of respondent for retrenchment of services of the claimants being violation of Section 25 of the Act be set aside and the claimants may be reinstated back in services and ONGC be directed to regularize their services.

Further, in addition to the pleadings/documents brought on record by the parties in order to plead their case, the evidence of following person on affidavit was brought and they were cross-examined by the parties in order to prove their case.

Evidence by way of affidavit on behalf of claimants:

- i) Manoj Nautiyal
- ii) Sunil Rawat
- iii) Raju
- iv) Bharat
- v) Saeed Ahmed
- vi) Raees Ahmed

Evidence on affidavit on behalf of respondent:

- i) P.S. Negi
- ii) Suresh Kumar, Sr.H.R.Executive

In spite of service of notices when the matter was taken up for hearing none appeared for workmen.

Accordingly, after hearing Sri U.K.Bajpai, learned counsel for the respondent and going through the record, the point to be considered/adjudicated are as under:

- (1) *Whether the claimants who were working on the posts of Part Time Ball Picker with the ONGC/respondent are workmen as per Section 2(s) of I.D. Act 1947?*
- (2) *Whether prior to retrenchment/termination of services of claimants they have complete 240 days while discharging the duties of Part Time Ball Picker in the last calendar, if so, the action on the part of respondent thereby retrenching the services of claimants without following the mandatory provisions of Section 25-F of I.D. Act is valid or not? If their services are retrenched or terminated without complying the mandatory provisions of Section 25-F of the Act by the respondent, then they are entitled for regularization of service w.e.f. 1.10.2023 or not?*

#### Findings/conclusion on Issue No.(1)

*“Whether the claimants who were working on the posts of Part Time Ball Picker with the ONGC/respondent are workmen as per Section 2(s) of I.D. Act 1947?”*

After hearing Sri U.K.Bajpai, Learned Counsel for the respondent and going through the record, admitted position which emerges out that claimants prior to their retrenchment/termination of services were working on the post of Part Time Ball Picker, duties which were discharged by them was to provide assistance in the various sports activities to the player which are carried out by the various Committees/Boards formed by the ONGC.

The question that falls for consideration is whether the claimants were workmen according to the definition of workman u/s 2(s) of the ID Act. The definition under this Section has undergone changes since its first enactment. The definition, as it stood originally when the ID Act came into force w.e.f. 1.4.1947, read as follows:-

*"(s) "workman" means any person employed (including an apprentice) in any industry to do any skilled or unskilled manual or clerical work for hire or reward and includes, for the purposes of any proceeding under this Act in relation to an industrial dispute, but does not include any person employed in the naval, military, or air service of the Crown."*

The definition was amended by Amending Act No. 36 of 1956 which came into force from 29th August, 1956 to read as follows:-

*(s) "workman" means any person (including an apprentice) employed in any industry to do any skilled or unskilled manual, supervisory technical or clerical work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal discharge, or retrenchment has led to that dispute, but does not include any such person -*

- (i) *who is subject to the Army Act, 1950, or the Air Force Act, 1950, or the Navy (Discipline) Act, 1934; or*
- (ii) *who is employed in the police service or as an officer or other employee of a prison; or*
- (iii) *who is employed mainly in a managerial or administrative capacity; or*
- (iv) *who, being employed in a supervisory capacity, draws wages exceeding five hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature."*

The change brought about by this Amendment was that the persons employed to do “supervisory” and “technical” work were also included in the definition for the first time by this Amendment, although those who were employed in a supervisory capacity were so included in the definition provided their monthly wage did not exceed Rs.500.

The definition of 'workman' was further amended by Amending Act No.46 of 1982 which was brought into force w.e.f. 21.8.1984 and the same reads as under:-

*"(s) "workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal discharge, or retrenchment has led to that dispute, but does not include any such person-*

*(i)who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957);*

*(ii) who is employed in the police service or as an officer or other employee of a prison; or*

*(iii) who is employed mainly in a managerial or administrative capacity; or*

*(iv) who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature."*

A bare perusal of the aforementioned provision clearly indicates that a person would come within the purview of the said definition if he : (i) is employed in any industry; and (ii) performs any manual, unskilled, skilled, technical, operational, clerical or supervisory work.

Hon'ble the Apex Court in the case of **All India Reserve Bank Employees Association Versus Reserve Bank of India reported in AIR 1966 SC 305** held as under:-

17. *However, in view of the importance of the subject and the possibility of a recurrence of such question in other spheres, and the remarks of the National Tribunal as to jurisdiction of the Central Government and itself we have considered it necessary to go into some of the points mooted before us. Before we deal with them we shall read some of the pertinent definitions from the Industrial Disputes Act, 1947 :*

*"2. In this Act, unless there is anything repugnant in the subject or context,--*

*(k) "Industrial dispute" means any dispute or difference between employers and employees, or between employers and workmen, or between workmen and workmen, which is connected with the employment or nonemployment or the terms of employment or with the condition of labour, of any person;*

*(rr) "wages" means all remuneration capable of being expressed in terms of money, which would, if the terms of employment, expressed or implied, were fulfilled, be payable to a workman in respect of his employment or of work done in such employment, and includes-*

*(i) such allowances (including dearness allowance) as the workman is for the time being entitled to;*

*(ii) the value of any house accommodation, or of supply of light, water, medical attendance or other amenity or of any service or of any concessional supply of foodgrains or other articles;*

*(iii) any traveling concession;*

*but does not include-*

*(a) any bonus;*

*(b) any contribution paid or payable by the employer to any pension fund or provident fund or for the benefit of the workman under any law for the time being in force;*

*(c) any gratuity payable on the termination of his service.*

*(s) "workman" means any person (including an apprentice) employed in any industry to do any skilled or unskilled manual, supervisory, technical or clerical work for hire or reward, whether the terms of employment be expressed or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, include,%, any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person-*

- (i) who is subject to the Army Act, 1950, or the Air Force Act, 1950, or the Navy (Discipline) Act, 1934, or
- (ii) who is employed in the police service or as an officer or other employee of a prison; or
- (iii) who is employed mainly in a managerial or administrative capacity; or
- (iv) who, being employed in a supervisory capacity, draws wages exceeding five hundred rupees per menses or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature."

23. The argument is extremely ingenious and the simile interesting but it misses the realities of the amendment of the Industrial Disputes Act in 1956. The definition of 'workman' as it originally stood before the amendment in 1956 was as follows :-

"2.(s) 'workman' means any person employed (including in apprentice) in any industry to do any skilled (11) 91 L. ed. 104 or unskilled manual or clerical work for hire or reward and includes, for the purposes of any proceedings under this Act in relation to an industrial dispute a workman discharged during that dispute, but does not include any person employed in naval, military or air service of the Government."

24. The amending Act of 1956 introduced among the categories of persons already mentioned persons employed to do supervisory and technical work. So far the language of the earlier enactment was used. When, however, exceptions were engrafted, that language was departed from in clause (iv) partly because the draftsman followed the language of clause (iii) and partly because from persons employed on supervision work some are to be excluded because they draw wages exceeding Rs. 500 per month and some because they function mainly in a managerial capacity or have duties of the same character. But the unity between the opening part of the definition and clause (iv) was expressly preserved by using the word 'such' twice in the opening part. The words, which bind the two parts, are not-"but does not include any person". They are -- "but does not include any such person showing clearly that what is being excluded is a person who answers the description "employed to do supervisory work" and he is to be excluded because being employed in a 'supervisory capacity' he draws wages exceeding Rs. 500 per month or exercises functions of a particular character. The scheme of our Act is much simpler than that of the American statutes. No doubt like the Taft-Hartley Act the amending Act of 1956 in our country was passed to equalize bargaining power and also to give the power of bargaining and invoking the Industrial Disputes Act to supervisory workmen, but it gave it only to some of the workmen employed on supervisory work. 'Workman' here includes an employee employed as supervisor. There are only two circumstances in which such a person ceases to be a workman. Such a person is not a workman if he draws wages in excess of Rs. 500 per month or if he performs managerial functions by reason of a power vested in him or by the nature of duties attached to his office. The person who ceases to be a workman is not a person who does not answer the description "employed to do supervisory work" but one who does answer that description. He goes out of the category of "workmen" on proof of the circumstances excluding him from the category."

Further in the case of **H.R. Adyanthaya & others Versus Sandoz India Ltd. reported in (1994) 5 SCC 373**, the Hon'ble Apex Court held as under:-

"10. It is thus obvious from the decision that the contention on behalf of the workman before the Industrial Tribunal as well as before this Court was that the employee was doing either manual or clerical work, and that not only he had no supervisory duties but he was doing his work under the direction of his superiors and, therefore, he was a workman within the meaning of the definition of workman as it stood then. The dispute in question had arisen prior to 6th January, 1956. The definition of 'workman' at the relevant time included only those persons who were employed to do any skilled or unskilled manual or clerical work. Hence the relevant contention on behalf of the workman which was negatived by this Court. An inference from this decision is also possible, viz., that if the employees' work was mainly manual or clerical, he would have, even as the definition stood then, been covered by it."

Hon'ble the Supreme Court in the case of **C.G. Gupta Versus Glaxo Smith Klin Pharmaceutical Limited reported in (2007) 7 SCC 171** held as under:-

"23. In the present case, we find that for determining the nature of amendment, the question is whether it affects the legal rights of individual workers in the context that if they fall within the definition then they would be entitled to claim several benefits conferred by the Act. The amendment should be also one which would touch upon their substantive rights. Unless there is a clear provision to the effect that it is retrospective or such retrospectivity can be implied by necessary implication or intendment, it must be held to be prospective. We find no such clear provision or anything to suggest by necessary implication or

intendment either in the amending Act or in the amendment itself. The amendment cannot be said to be one which affects procedure. In so far as the amendment substantially changes the scope of the definition of the term "workman" it cannot be said to be merely declaratory or clarificatory. In this regard we find that entirely new category of persons who are doing "operational" work was introduced first time in the definition and the words "skilled" and "unskilled" were made independent categories unlinked to the word "manual". It can be seen that the Industrial Disputes (Amendment) Act, 1984 was enacted by Parliament on 31.8.1982. Page 2633 However, the amendment itself was not brought into force immediately and in Sub-section (1) of Section 1 of the Amending Act, it was provided that it would come into force on such day as the Central Government may be Notification in the official Gazette, appoint. Ultimately, by a Notification the said amendment was brought into force on 21.8.1984. Although this Court has held that the amendment would be prospective if it is deemed to have come with effect on a particular day, a provision in the amendment Act to the effect that amendment would become operative in the future, would have similar effect.

24. Therefore, by the application of the tests mentioned above, it is clear that the definition of workman as amended must, therefore, presumed to be prospective.

25. In this regard we would like to give one further reason as to why the definition of workman as prevailing on the date of dismissal should be taken into account. When the workman is dismissed, it is usually contended (as has been done in the present case) that the relevant conditions precedent for retrenchment under Section 25N having not been followed and that, therefore, the termination is illegal. Section 25Q of the Industrial Disputes Act, 1947 lays down that contravention of the provision of Section 25N shall be punishable with imprisonment for a term which may extend to one month or with fine which may extend to Rs. 1000/- or with both. It is, therefore, clear that on the date of dismissal, the employer must act according to the then prevailing provision of law. It is only in respect of a workman who is then within the definition of Section 2(s) of the Act that the employer is required to follow the condition mentioned in Section 25N, failing which, he will commit an offence. If the employee so dismissed, later becomes a person who is a workman within an expanded definition brought about by a subsequent amendment held to be of retrospective nature, the employer will be rendered punishable for an offence under Section 25N and Q as this would amount to the employer being punishable for an offence, which he could not have envisaged on the date of dismissal. This would be violative of Article 20(1) of the Constitution.

26. In *Burmah Shell's case* (supra) it was held as follows:

In this connection, we may take notice of the argument advanced by Mr. Chari on behalf of the Association that, whenever a technical man is employed in an industry, it must be held that he is employed to do technical work irrespective of the manner in which and the occasions on which the technical knowledge of that person is actually brought into use. The general proposition put forward by him was that, if a technical employee even gives advice or guides other workmen, it must be held that he is doing technical work and not supervisory work. He elaborated this submission by urging that, if we hold the supervisory work done by a technician as not amounting to his being employed to do technical work, the result would be that only those persons would be held to be employed on technical work who actually do manual work themselves. According to him this would result in making the word "technical" redundant in the definition of 'workman' even though it Page 2634 was later introduced to amplify the scope of the definition. We are unable to accept these submissions. The argument that, if we hold that supervisory work done by a technical man is not employment to do technical work, it would result in only manual work being held to be technical work, is not at all correct. There is a clear distinction between technical work and manual work. Similarly there is a distinction between employments which 'are substantially for manual duties, and employments where the principal duties are supervisory or other type, though incidentally involving some manual work. Even though the law in India is different from that in England, the views expressed by Branson, J., in *Appeal of Gardner : In re Maschek : In re Tyrrell* [1938] 1 All E.R. 20 are helpful, because, there also, the nature of the work had to be examined to see whether it was manual work. As examples of duties different from manual labour, though incidentally involving manual work, he mentioned cases where a worker (a) is mainly occupied in clerical or accounting work, or (b) is mainly occupied in supervising the work of others, or (c) is mainly occupied in managing a business or a department, or (d) is mainly engaged in salesmanship, or (e) if the successful execution of his work depends mainly upon the display of taste or imagination or the exercise of some special mental or artistic faculty or the application of scientific knowledge as distinguished from manual dexterity. Another helpful illustration given by him of the contrast between the two types of cases was in the following words:

If one finds a man employed because he has the artistic faculties which will enable him to produce something wanted in the shape of a creation of his own, then obviously, although it involves a good deal of manual labour, he is employed in order that the employer may get the benefit of his creative faculty.



*The example (e), given above, very appropriately applies to the case of a person employed to do technical work. His work depends upon special mental training or scientific or technical knowledge. If the man is employed because he possesses such faculties and they enable him to produce something as a creation of his own, he will have to be held to be employed on technical work, even though, in carrying out that work, he may have to go through a lot of manual labour. If, on the other hand, he is merely employed in supervising the work of others, the fact that, for the purpose of proper supervision, he is required to have technical knowledge will not convert his supervisory work into technical work. The work of giving advice and guidance cannot be held to be an employment to do technical work."*

Hon'ble the Apex Court in the case of **Chauharya Tripathi & others Versus L.I.C. of India & others reported in 2015 (7) SCC 263**, in Para-7 held as under:-

*"7. Keeping in view the question posed at the beginning, we are obligated to make a survey of the authorities that have been pronounced by this Court specifically pertaining to the Development Officers working in LIC. A three-Judge Bench of this Court in S.K. Verma vs. Mahesh Chandra & Anr.3, adverted to the definition of 'workman' as originally defined under Section 2(s) of the Act and the substantial amendment that was brought in 1956 in respect of the definition of 'workman' and referred to the decision in Workmen vs. Indian Standards Institution4 and dwelled upon the hierarchy of officers working in LIC, the duties performed by such officers and 2 (2008) 11 SCC 319 3 (1983) 4 SCC 214 4 (1975) 2 SCC 847 eventually held thus :*

*"A perusal of the above extracted terms and conditions of appointment shows that a development officer is to be a whole time employee of the Life Insurance Corporation of India. that his operations are to be restricted to a defined area and that he is liable to be transferred. He has no authority whatsoever to bind the Corporation in anyway. His principal duty appears to be to organise and develop the business of the Corporation in the area allotted to him and for that purpose to recruit active and reliable agents, to train them to canvass new business and to render post-sale services to policy-holders. He is expected to assist and inspire the agents. Even so he has not the authority to appoint agents or to take disciplinary action against them. He does not even supervise the work of the agents though he is required to train them and assist them. He is to be the 'friend, philosopher and guide' of the agents working within his jurisdiction and no more. He is expected to stimulate and excite the agents to work, while exercising no administrative control over them. The agents are not his subordinates. In fact, it is admitted that he has no subordinate staff working under him. It is thus clear that the development officer cannot by any stretch of imagination be said to be engaged in any administrative or managerial work. He is a workman within the meaning of s.2(s) of the Industrial Disputes Act."*

(See also : **Om Carrying Corporation Versus Tilock Narang & others reported in 2016(148) FLR 915 & T.Boby Francis Versus Lucy Varghese & others reported in 2016(149) FLR 866**)

Hon'ble Punjab & Haryana High Court in the case of **Jagdish Prasad Sharma Versus Presiding Officer, Industrial Tribunal-cum-Labour Court-I, Gurugram & another reported in 2023 (178) FLR 565** held as under:-

*"5. After hearing learned counsel and consideration his submissions, it transpires that in the ex parte evidence in support of his claim, the petitioner tendered affidavit Ex.PW1/A in evidence and a perusal of the same shows that it is nowhere mentioned by the petitioner that he by the nature of his duties and work is a workman. Further, it is categorically mentioned therein that he joined the respondent-Company as Superintendent Grade-II, who was later on confirmed as an Operation Manager and worked till 01.06.2020. The petitioner revealed his last drawn wages as Rs.40,500/- per month. A perusal of the impugned award shows that the Labour Court has carefully examined the evidence on record including his affidavit Ex.PW-1/A, while holding that he failed to lead any evidence that he is a workman and dismissed his claim. In the given facts this Court does not find any merit in the argument that petitioner would fall within the definition of workman defined in Section 2(s) Industrial Disputes Act, 1947. Further, the decision in S.K. Maini's case (supra) relied upon by learned counsel for the petitioner also does not lend any help to the petitioner's case, wherein, it was held that whether an employee is a workman or not is required to be determined with reference to the nature of duties and functions. The relevant observations read as under:-*

*"After giving our careful consideration to the facts and circumstances of the case and the submissions made by the learned counsel for the parties, it appears to us that whether or not an employee is a workman under Section 2(s) of the Industrial Disputes Act is required to be determined with reference to his principal nature of duties and functions. Such question is required to be determined with reference to the facts and circumstances of the case and materials on record and it is not possible to lay down any strait-jacket formula which can decide the dispute as to the real nature of duties and functions being performed by an employee in all cases. When an employee is employed to do the types of work enumerated in the definition of workman under Section 2(s), there is hardly any difficulty in treating him as a workman under the appropriate classification but in the complexity of industrial or commercial organizations quite a large number of employees are often required to do more than one*

kind of work. In such cases, it becomes necessary to determine under which classification the employee will fall for the purpose of deciding whether he comes within the definition of workman or goes out of it."

6. The Hon'ble Supreme Court while rejecting the case of appellant on merits also analyzed the nature and work of the appellant therein and upheld the findings of the High Court that he being Manager/In-charge of the shop was not a workman under Section 2(s) Industrial Disputes Act, 1947."

Recently the Bombay High Court in the case of **M/s. S.K. International & another Versus Ashok Tanaji Tambe & another reported in 2024 (180) FLR 994** has held as under:-

"17. On the aspect of determination of status of workmen, within the meaning of Section 2(s) of the ID Act, 1947, the legal position is fairly crystalized. Such determination must be based on the appreciation of the nature of the duties performed by the employee. Nomenclature of the post, which the employee holds, is not of decisive significance. The description of the nature of the duties also does not furnish a surer foundation for determination. Use of grandstanding expressions and management jargon to describe otherwise ordinary and normal functions, is not uncommon. It is, therefore, necessary to correctly appreciate the nature of the core duties discharged by a person whose status is questioned.

18. Section 2(s) of the ID Act, 1947 defines the expression workman to mean any person employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward. In the case of H.R. Adyanthaya and ors. vs. Sandoz (India) Ltd., the Constitution Bench of the Supreme Court enunciated that to be qualified to be workman under Section 2(s), the person must be employed to do the work which falls in any of the specified categories, manual, unskilled, skilled, technical, operational, clerical or supervisory. To put it in other words, it is not enough that a person is not covered by any of the four exceptions to the definition. It is also fairly well settled that the burden is on the person, who asserts the status of the workman under Section 2(s) to establish with reference to the dominant nature of his duties that the work which the said person performs falls within one of the specified categories under Section 2(s) of the Act, 1947.

19. In the case of *Burmah Shell Oil Storage and Distribution Company of India Ltd. V/s. The Burmah Shell Management Staff Association and Others* the Supreme Court adverted to a situation where an employee is entrusted to discharge multifarious duties. In such cases, the Supreme Court held, it would be necessary to determine under which classification the employee will fall for the purpose of finding out whether he does not go out of the definition of "workman" under the exceptions. The principle is now well settled that for this purpose, a workman must be held to be employed to do that work which is the work he is required to do, even though he may be incidentally doing other types of work. The Supreme Court referred to its earlier decision in the case of *Ananda Bazar Patrika (P) Ltd. Vs. Workmen*, where the principle was enunciated as under:

"3. The question whether a person is employed in a supervisory capacity or on clerical work, in our opinion, depends upon whether the main and principal duties carried out by him are those of a supervisory character, or of a nature carried out by a clerk. If a person is mainly doing supervisory work, but, incidentally or for a fraction of the time, also does some clerical work, it would have to be held that he is employed in supervisory capacity; and, conversely, if the main work done is of clerical nature, the mere act that some supervisory duties are also carried out incidentally or as a small fraction of the work done by him will not convert his employment as a clerk into one in supervisory capacity. ...."

(emphasis supplied)

20. In the case of *Arkal Govind Raj Rao vs. CIBA Geigy and India Ltd.* another three-judge Bench of the Supreme Court re-exposed the principle in the following words:

"6. where an employee has multifarious duties and a question is raised whether he is a workman or someone other than a workman the Court must find out what are the primary and basic duties of the person concerned and if he is incidentally asked to do some other work, may not necessarily be in tune with the basic duties, these additional duties cannot change the character and status of the person concerned. In other words, the dominant purpose of employment must be taken into consideration and the gloss of some additional duties must be rejected while determining the status and character of the person. ...."

21. A useful reference in this context can also be made to a decision of the Supreme Court in the case of *S.K.Maini V/s. M/s. Carona Sahu Company Ltd. and Anr.*10 wherein it was enunciated that when an employee is employed to do the types of work enumerated in the definition of workman under Section 2(s), there is hardly any difficulty in treating him as a workman under the appropriate classification but in the complexity of industrial or commercial organisations quite a large number of employees are often required



to do more than one kind of work. In such cases, it becomes necessary to determine under which classification the employee will fall for the purpose of deciding whether he comes within the definition of workman or goes out of it. In this connection, reference may be made to the decision of this Court in *Burmah Shell Oil Storage (supra)*. In *All India Reserve Bank Employees' Assn. V/s. Reserve Bank of India*, it has been held by this Court that the word 'supervise' and its derivatives are not words of precise import and must often be construed in the light of context, for unless controlled, they cover an easily simple oversight and direction as manual work coupled with the power of inspection and superintendence of the manual work of others. It has been rightly contended by both the learned counsel that the designation of an employee is not of much importance and what is important is the nature of duties being performed by the employee. The determinative factor is the main duties of the employee concerned and not some works incidentally done. In other words, what is, in substance, the work which employee does or what in substance he is employed to do. Viewed from this angle, if the employee is mainly doing supervisory work but incidentally or for a fraction of time also does some manual or clerical work, the employee should be held to be doing supervisory works. Conversely, if the main work is of manual, clerical or of technical nature, the mere fact that some supervisory or other work is also done by the employee incidentally or only a small fraction of working time is devoted to some supervisory works, the employee will come within the purview of 'workman' as defined in Section 2(s) of the *Industrial Disputes Act*."

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"3. The question whether a person is employed in a supervisory capacity or on clerical work, in our opinion, depends upon whether the main and principal duties carried out by him are those of a supervisory character, or of a nature carried out by a clerk. If a person is mainly doing supervisory work, but, incidentally or for a fraction of the time, also does some clerical work, it would have to be held that he is employed in supervisory capacity; and, conversely, if the main work done is of clerical nature, the mere act that some supervisory duties are also carried out incidentally or as a small fraction of the work done by him will not convert his employment as a clerk into one in supervisory capacity....." (Emphasis supplied)

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"6. where an employee has multifarious duties and a question is raised whether he is a workman or someone other than a workman the Court must find out what are the primary and basic duties of the person concerned and if he is incidentally asked to do some other work, may not necessarily be in tune

with the basic duties, these additional duties cannot change the character and status of the person concerned. In other words, the dominant purpose of employment must be taken into consideration and the gloss of some additional duties must be rejected while determining the status and character of the person.....

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Hon'ble Supreme Court by means of judgment dated 24.2.2004 passed in the case of *M/s. Bharat Airtel Limited Versus A.S. Raghavendra passed in Civil Appeal No.5187 of 2023 (2024 INSC 265)* after taking into consider the definition of 'workman' as given u/s 2 's' of the I.D. Act, 1947; and various judgments on the point in issue, held as under:-

"23. The records also show that the respondent, in fact, performed a supervisory role over the managers and was the Assessing Manager of his team, which consisted of Managers in the B-1 & B-2 Levels. Moreover, after adducing the evidence led by both sides, the Labour Court vide a detailed order and discussion, has held the respondent not to be covered under "workman" as per Section 2(s), ID Act. The learned Single Judge has not appreciated the discussion by the Labour Court and the available evidence in their true perspective, relying mainly upon the judgment in *Ved Prakash Gupta (supra)*. In Paragraph 12 of *Ved Prakash Gupta (supra)*, it was held "...It must also be remembered that the evidence of both WW1 and MW1 shows that the appellant could never appoint or dismiss any workman or order any enquiry against any workman. In these circumstances we hold that the substantial duty of the appellant was only that of a Security Inspector at the gate of the factory premises and that it was neither managerial nor supervisory in nature in the sense in which those terms are understood in industrial law. In the light of the evidence and the legal position referred to above we are of the opinion that the finding of the Labour Court that the appellant is not a workman within the meaning of Section 2(s) of the Act is perverse and could not be supported."

24. A bare perusal of the above makes it crystal clear that absence of power to appoint, dismiss or conduct disciplinary enquiries against other employees was not the only reason for the Court to conclude in *Ved Prakash Gupta (supra)* that the appellant therein was a "workman". At this juncture, we may note that although *Ved Prakash Gupta (supra)* was decided by a 3-Judge Bench, in a later judgment by a 2-Judge Bench of this Court in *S K Maini v M/s Carona Sahu Company Limited*, (1994) 3 SCC 510, it was held that "...It should be borne in mind that an employee discharging managerial duties and functions may not, as a matter of course, be invested with the power of appointment and discharge of other employees. It is not unlikely that in a big set-up such power is not invested to a local manager but such power is given to some superior officers also in the management cadre at divisional or regional level. ..." The judgment in *S K Maini (supra)* is innocent of *Ved Prakash Gupta (supra)*, but we do not find any inconsistency in the statement of law laid down in *S K Maini (supra)*, given our reading of *Ved Prakash Gupta (supra)* as enunciated hereinabove.

25. That being said, in our considered view, mere absence of power to appoint, dismiss or hold disciplinary inquiries against other employees, would not and could not be the sole criterion to determine such an issue. Holding otherwise would lead to incongruous consequences, as the same would, illustratively, mean that, employees in high-ranking positions but without powers to appoint, dismiss or hold disciplinary enquiry would be included under the umbrella of "workman" under Section 2(s), ID Act. We cannot be oblivious of

*the impact of our decisions. In this context, reference to the decision in Shivashakti Sugars Limited v Shree Renuka Sugar Limited, (2017) 7 SCC 729 is apposite:*

*“43. It has been recognised for quite some time now that law is an interdisciplinary subject where interface between law and other sciences (social sciences as well as natural/ physical sciences) come into play and the impact of other disciplines on Law is to be necessarily kept in mind while taking a decision (of course, within the parameters of legal provisions). Interface between Law and Economics is much more relevant in today's time when the country has ushered into the era of economic liberalisation, which is also termed as “globalisation” of economy. India is on 118 [2024] 4 S.C.R. Digital Supreme Court Reports the road of economic growth. It has been a developing economy for number of decades and all efforts are made, at all levels, to ensure that it becomes a fully developed economy. Various measures are taken in this behalf by the policy-makers. The judicial wing, while undertaking the task of performing its judicial function, is also required to perform its role in this direction. It calls for an economic analysis of law approach, most commonly referred to as “Law and Economics”. In fact, in certain branches of Law there is a direct impact of Economics and economic considerations play predominant role, which are even recognised as legal principles. Monopoly laws (popularly known as “Antitrust Laws” in USA) have been transformed by Economics. The issues arising in competition laws (which has replaced monopoly laws) are decided primarily on economic analysis of various provisions of the Competition Commission Act. Similar approach is to be necessarily adopted while interpreting bankruptcy laws or even matters relating to corporate finance, etc. The impress of Economics is strong while examining various facets of the issues arising under the aforesaid laws. In fact, economic evidence plays a big role even while deciding environmental issues. There is a growing role of Economics in contract, labour, tax, corporate and other laws. Courts are increasingly receptive to economic arguments while deciding these issues. In such an environment it becomes the bounden duty of the Court to have the economic analysis and economic impact of its decisions. 44. We may hasten to add that it is by no means suggested that while taking into account these considerations, specific provisions of law are to be ignored. First duty of the Court is to decide the case by applying the statutory provisions. However, on the application of law and while interpreting a particular provision, economic impact/effect of a decision, wherever warranted, has to be kept in mind. Likewise, in a situation where two views are possible or wherever there is a discretion given to the Court by law, the Court needs to lean in favour of a particular view which subserves the economic interest of the nation. Conversely, the Court [2024] 4 S.C.R. 119 M/S Bharti Airtel Limited v. A.S. Raghavendra needs to avoid that particular outcome which has a potential to create an adverse effect on employment, growth of infrastructure or economy or the revenue of the State. It is in this context that economic analysis of the impact of the decision becomes imperative.”*

Hon'ble the Bombay High Court in the case of **Godrej and Boyce Manufacturing Company Ltd. Vs. Shivkranti Kamgar Sanghatana & others 2024 LLR 492** held as under:

*“4. The respondent is a union registered under the Trade Unions Act of 1926 representing workmen of the company established in Satara.*

*5. In 2015, the respondent raised a Charter of Demands seeking an increase in wages, benefits and emoluments for the workmen concerned. Since the conciliation proceedings failed, the dispute was referred to the Industrial Tribunal for adjudication. The union raised the dispute on behalf of about 44 employees whose names were stated in Annexure-A to the Statement of Claim.*

*6. The petitioner applied framing of a preliminary issue as, according to the petitioner, persons named in the Annexure to the statement of claim do not fall within the meaning of Section 2(s) of the I.D. Act. By an order dated 8th November 2017, the Industrial Tribunal framed a preliminary issue as to whether the employees mentioned in Annexure-A to the statement of claim are workmen.*

*7. The respondent examined Mr. Sachin Desai as its only witness by filing his affidavit in lieu of examination-in-chief whom the petitioner cross-examined. Petitioner examined eight witnesses in support of his plea that persons mentioned in the Annexure are not workmen. The respondent cross-examined the witnesses. The Industrial Tribunal Satara, by order dated 9th June 2021, held that 20 persons enlisted in the Annexure to the statement of claim are workmen within the meaning of Section 2(s) of the I.D. Act. The petitioner has, therefore, filed a present writ petition challenging the said order.*

*8. Mr. Cama learned senior advocate appearing for the company establishment, has urged the following submissions in support of the challenge to the order of the Industrial Tribunal:*

*i. The duties assigned to the workers were managerial, administrative, or supervisory. The dominant nature of their work was managerial or administrative.*

ii. *The Industrial Tribunal wrongly concluded that the respondent employees are technically qualified (ITI persons). Hence, they cannot be termed as persons performing supervisory or managerial functions.*

iii. *In the letters of appointment, letters of confirmation, and during the annual performance appraisal process, they were engaged to perform managerial and supervisory functions. Assuming respondent employees fall within the lowest rank system, they still were in the management cadre of the petitioner company by nature of their duties.*

iv. *The initial burden of proving that employees are workmen within the meaning of Section 2(s) of the I.D. Act is on the employees that they failed to discharge as only one person who later withdrew from the proceeding deposed on behalf of all the employees.*

v. *Various material documents produced on record by the petitioner relating to the recruitment process, duty list, performance appraisal, progressive reviews, management cadre emoluments, management remuneration package, performance paid, and economic value add, i.e., based on the profit-showing formula, were not properly considered by the Industrial Tribunal.*

vi. *The evidence laid by the petitioner in respect of the nature of duties carried out by respondent employees, which clearly established that duties performed by them do not fall within the inclusive portion of the definition of the word "workman", remained unchallenged as they were cross-examined on behalf of the respondent union. According to him, the order passed by the Industrial Tribunal does not conform with the Apex Court's judgment in the case of *Burmah Shell Oil Storage and Distribution Company of India Limited Vs. Burmah Shell Management Staff Association and Ors.* reported in AIR 1971 SCC 922, this court in case of *The National Textile Corporation (Maharashtra North), Ltd., and Ors. Vs. S.M. Tambe and Anr.* 2000 (3) L.L.N. 913 and *C. Gupta Vs. GlaxoSmithKline Pharmaceutical Ltd. & Anr.* 2004 Volume II CLR 23 and, therefore, the order deserves to be set aside, and the matter needs to be sent back to the Industrial Tribunal for fresh consideration of the question of whether the concerned employees were working within the meaning of Section 2(s) of the I.D. Act or not.*

9. *On the other hand, Mr. Nitin Kulkarni, learned counsel appearing of the union, would urge that:*

i. *The Industrial Tribunal applied the correct test and rightly held that the concerned employees were workmen under Section 2(s) of the I.D. Act.*

ii. *Witness Sachin Jadhav gave details of the nature of work performed by each employee. In the cross-examination, petitioners' witnesses admitted that K-Band, where the respondents were carrying out their work, is the lowest Band. Supervisors belonged to A-Band, Managers to P-Band, Engineers to O-Band, the Assistant General Manager to T-Band, and the General Manager to E-Band. The respondent workers belonged to K-Band and held ITI qualifications acquired after passing the 10th standard examination.*

iii. *From the available evidence, it is more than clear that employees were discharging the duties of workers as specified in the Statement of Claim and, therefore, findings recorded by the Industrial Tribunal do not require any interference in extraordinary jurisdiction under Article 226 and 227 of the Constitution of India.*

10. *Before August 29, 1956, the Industrial Disputes Act's definition of "workman" only included skilled and unskilled manual or clerical workers, excluding those in supervisory, technical roles. However, amendments in 1956 and 1982 expanded the definition to include these categories. The Supreme Court judgments in *May and Baker (India) Ltd. v. Workmen* AIR 1967 SC 678, *Western India Match Co. Ltd. v. Workmen* 1963:INSC:130 : AIR 1964 SC 472, and *Burmah Shell Oil Storage and Distribution Co. of India Ltd. v. Burma Shell Management Staff Assn.* (1970) 3 SCC 378 interpreted the definition in earlier years, focusing on whether the work done by individuals fell within the categories of manual, clerical, supervisory, or technical. These judgments determined the eligibility of individuals as workmen based on the nature of their tasks. Subsequent judgments in *S.K. Verma v. Mahesh Chandra* (1983) 4 SCC 214] *Ved Prakash Gupta v. Delton Cable India (P) Ltd.* (1984) 2 SCC 569 and *Arkal Govind Raj Rao v. Ciba Geigy of India Ltd.* (1985) 3 SCC 371 failed to notice the earlier decisions and adopted a broader interpretation. They held that individuals not fitting the four specified categories could still be considered workmen- however, the judgment in *A. Sundarambal v. Govt. of Goa, Daman and Diu* (1988) 4 SCC 42 reaffirmed the importance of the earlier precedents, asserting that a person must fall within the defined categories to qualify as a workman. Ultimately, the legal position is crystallized in the case of *H.R. Adyanthaya and Ors. Vs. Sandoz (India) Limited* reported in 1994 5 SCC 737 wherein the five Judges' bench of Apex Court held that to be considered a workman under the ID Act, an individual must be employed in manual, unskilled, skilled, technical, operational, clerical or supervisory. It is not enough that he is not covered by either of the four exceptions to the definition. It is held that to attract provisions of Section 2(s) of the I.D. Act, the employee must show that*

*he performs any work enumerated in the definition and that he is excluded under the four exceptions as provided in the definition.*

*11. For the adjudication of the status of a workman, what is required to be seen is an emphasis on the actual work performed by such an employee. In other words, if the nature of duties actually performed predominantly shows that he discharges duties to do the work of any of the categories listed in Section 2(s). He is not covered by exceptions of Section 2(s); it would be decisive of the matter that the employee is a workman, and the designation or salary of the employee would be irrelevant.*

*12. It is now well settled that the adjudication of the issue as to person working within the meaning of Section 2(s) of the I.D. Act has to be determined with reference to the principle of nature of his duties and functions. The dominant purpose of employees must be taken into consideration, and the gloss of some additional duties must be rejected while determining the status and character of a person. The Tribunal needs to first address itself as to various duties assigned to the employees and then draw a conclusion of law as to whether in the light of duties assigned to him would be whether the employee would be working or not."*

Accordingly, in not shell it can be said that from perusal of definition of 'workman' indicates that a person would come within the purview of Section 2(s) of the I.D. Act if he is employed in an industry and performs any manual, unskilled, skilled, technical, operational, clerical or supervisory work. Further, the definition also indicates exceptions as to when a person would not be covered in the aforementioned definition. It inter alia states that a person would not be covered under the definition if (i) he is employed in a managerial or administrative capacity or (ii) who, being employed in a supervisory capacity, draws wages exceeding ten thousand rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.

Reverting to the facts of present case, as per the pleadings/documents filed by the parties on record as well as the documentary and oral evidence led by them, from careful scrutiny of said material, the position which emerged out that the claimants/workmen who were working on the post of Part Time Ball Picker before retrenchment of their services with the respondent/ONGC are workman as per the definition given u/s 2 's' of the Industrial Disputes Act 1947.

#### Findings/conclusion on Issue No.(2):

*"Whether prior to retrenchment/termination of services of claimants they have complete 240 days while discharging the duties of Part Time Ball Picker in the last calendar, if so, the action on the part of respondent thereby retrenching the services of claimants without following the mandatory provisions of Section 25-F of I.D. Act is valid or not? If their services are retrenched or terminated without complying the mandatory provisions of Section 25-F of the Act by the respondent, then they are entitled for regularization of service w.e.f. 1.10.2023 or not?"*

In order to decide the point in question it is appropriate to have a glance of Section 2(oo), 2(s) and Section 25-F of I.D. Act, 1947 which reads as under:-

**"2. (oo) "retrenchment"** means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include –

- (a) voluntary retirement of the workman; or
- (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or
- (bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or
- (c) termination of the service of a workman on the ground of continued ill-health;

**2(s) "workman"** means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person--

- (i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or
- (ii) who is employed in the police service or as an officer or other employee of a prison; or

- (iii) who is employed mainly in a managerial or administrative capacity; or who, being employed in a supervisory capacity, draws wages exceeding ten thousand rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.

**25F. Conditions precedent to retrenchment of workmen.-**

No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;
- (b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."

Hon'ble Delhi High Court in the case of **Sarita Tiwari Versus Aastha Garments reported in 2024 (180) FLR 649** after taking into consideration the definition of retrenchment read with provisions as provided under Section 25-F of the Act, held as under:-

"20. It is well-settled that the burden to prove that the workman was in continuous employment of 240 days with the management is on the workman herself. This principle was reiterated by the Hon'ble Supreme Court in the landmark judgement of *R.M. Yellatti v. Asstt. Executive Engineer*, (2006) 1 SCC 106; the relevant paragraph is extracted below:-

"17. Analysing the above decisions of this Court, it is clear that the provisions of the Evidence Act in terms do not apply to the proceedings under Section 10 of the Industrial Disputes Act. However, applying general principles and on reading the aforesaid judgments, we find that this By:MANISH KUMAR W.P.(C) 5369/2019 8 of 16 Court has repeatedly taken the view that the burden of proof is on the claimant to show that he had worked for 240 days in a given year. This burden is discharged only upon the workman stepping in the witness box. This burden is discharged upon the workman adducing cogent evidence, both oral and documentary. In cases of termination of services of daily-waged earners, there will be no letter of appointment or termination. There will also be no receipt or proof of payment. Thus in most cases, the workman (the claimant) can only call upon the employer to produce before the court the nominal muster roll for the given period, the letter of appointment or termination, if any, the wage register, the attendance register, etc. Drawing of adverse inference ultimately would depend thereafter on the facts of each case. The above decisions however make it clear that mere affidavits or self-serving statements made by the claimant workman will not suffice in the matter of discharge of the burden placed by law on the workman to prove that he had worked for 240 days in a given year. The above judgments further lay down that mere non-production of muster rolls per se without any plea of suppression by the claimant workman will not be the ground for the Tribunal to draw an adverse inference against the management. Lastly, the above judgments lay down the basic principle, namely, that the High Court under Article 226 of the Constitution will not interfere with the concurrent findings of fact recorded by the Labour Court unless they are perverse. This exercise will depend upon the facts of each case."

21. These principles were reiterated by the Hon'ble Supreme Court in *Krishna Bhagya Jala Nigam Ltd. v. Mohd. Rafi*, (2009) 11 SCC 522, and the law on this subject was traced as under in paragraphs 8 to 10:

"8. In *Rajasthan State Ganganagar S. Mills Ltd. v. State of Rajasthan* [(2004) 8 SCC 161] the position was again reiterated in para 6 as follows : (SCC p.163)

'6. It was the case of the workman that he had worked for more than 240 days in the year concerned. This claim was denied by the appellant. It was for the claimant to lead evidence to show that he had in fact worked up to 240 days in the year preceding his termination. He has filed an affidavit. It is only his own statement which is in his favour and that cannot be regarded as sufficient evidence for any court or tribunal to come to the conclusion that in fact the claimant had worked for 240 days in a year. These aspects were highlighted in *Range Forest Officer v.S.T. Hadimani* [(2002) 3 SCC 25]. No proof of receipt of salary or wages for 240 days or order or record in that regard was produced. Mere non-production of the muster roll for a particular period was not sufficient for the Labour Court to hold that the workman had worked for 240 days as claimed.'

9. In *Municipal Corpn., Faridabad v. Siri Niwas* [(2004) 8 SCC 195] it was held that the burden was on the workman to show that he was working for more than 240 days in the preceding one year prior to his alleged retrenchment. In *M.P. Electricity Board v. Hariram* [(2004) 8 SCC 246] the position By: MANISH KUMAR W.P.(C) 5369/2019 10 of 16 was again reiterated in para 11 as follows : (SCC p. 250) '11. The above burden having not been discharged and the Labour Court having held so, in our opinion, the Industrial Court and the High Court erred in basing an order of reinstatement solely on an adverse inference drawn erroneously. At this stage it may be useful to refer to a judgment of this Court in *Municipal Corpn., Faridabad v. Siri Niwas* [(2004) 8 SCC 195] wherein this Court disagreed with the High Court's view of drawing an adverse inference in regard to the non-production of certain relevant documents. This is what this Court had to say in that regard : (SCC p. 198, para 15)

"15. A court of law even in a case where provisions of the Evidence Act apply, may presume or may not presume that if a party despite possession of the best evidence had not produced the same, it would have gone against his contentions. The matter, however, would be different where despite direction by a court the evidence is withheld. Presumption as to adverse inference for non-production of evidence is always optional and one of the factors which is required to be taken into consideration is the background of facts involved in the lis. The presumption, thus, is not obligatory because notwithstanding the intentional non-production, other circumstances may exist upon which such intentional non-production may be found to be justifiable on some reasonable grounds. In the instant case, the Industrial Tribunal did not draw any adverse inference against the appellant. It was within its jurisdiction to do so particularly having regard to the nature of the evidence adduced by the respondent."

10. In *RBI v. S. Mani* [(2005) 5 SCC 100] a three- Judge Bench of this Court again considered the matter and held that the initial burden of proof was on the workman to show that he had completed 240 days of service. The Tribunal's view that the burden was on the employer was held to be erroneous. [...]"

22. In light of the law laid down by the Hon'ble Supreme Court, the initial question to be examined is whether the petitioner discharged her burden of proving that she was in continuous employment for at least 240 days in the year preceding her date of termination."

A Division Bench of Allahabad High Court in a case of *Ghanshyam Prajapati Versus Union of India reported in 2024 (1) FLR 131*, after taking into consideration has held that if a workman has not completed 240 days in the last preceding year is not entitled for the benefit of Section 25-F of the Act.

Hon'ble Apex Court in the case of *Pradeep Versus Maganese ore (India) Ltd. & others reported in (2022) 3 SCC 683* after taking into consideration the provisions of Section 106 of Evidence Act held that burden lies on a person who wants to get the benefit of a particular thing on the basis of facts of the case.

Reverting to the facts of the present case from the pleadings of parties as taken by them and statement as given on behalf of workmen on affidavit are identical in nature and from the relevant portion cross examination of Sri Manoj Nautiyal:

“मुझे 30.8.03 को सेवा से मौखिक ही हटाया गया / श्री नेगी RSC द्वारा ही हटाया गया। हमें हटाने के समय RSC मे 9 वाल पीकर थे। सभी को हटा दिया गया गया।”

From the statement of cross examination of Sri Sunil Rawat:

“मुझे कोई नियुक्ति पत्र नहीं दिया गया था। मुझे सेवा से निकालने सम्बन्धी कोई पत्र नहीं दिया गया। मुझे पी.वी नेगी, P&A officer ने भर्ती किया था।”

From the statement of cross examination of Sri Saheed Ahmed:

“1.10.2003 को मुझे कम से हटाया गया. निकले जाने का भी कोई पत्र मुझे नहीं दिया गया रखने से पूर्व श्री नेगी ने कोई टेस्ट या इंटरव्यू नहीं लिया थारोजगार दफ्तर से भी नाम नहीं गया था मैंने स्वयं अपना नाम पता नेगी जी को दिया था.

सूची A-11/8 के द्वारा दाखिल पेज संख्या 1 से लेकर 68 तक की मूल मेरे पास नहीं है। इन कागजों में क्या लिखा है मैं नहीं जानता। मुझे नहीं मालूम कि यह कहां से प्राप्त हुए और किसने दाखिल किए। कागज पत्र दाखिल करने की जानकारी श्री सुनील रावत को है। जो कागज न्यायालय में दाखिल थे उसके अतिरिक्त कोर्ट अन्य कागज लगातार कार्य प्रमाणित करने के लिए मेरे पास नहीं है। ONGC के नियम कानून अलग से हैं कि नहीं मालूम”

From the statement of cross examination of Sri Raish Ahmed:

“मुझे यह पता नहीं था कि 80802003 को रिजिनल स्पोर्ट्स काउंसिल हम मुझे हटाने जा रही है. दावे में हमारे दस्तखत हैं. मैं अंग्रेजी समझ नहीं सकता. यह मुझे मालूम है कि निकल जाने से पहले हमने ALC में दावा दाखिल कर दिया था. यह

हम लोगों को पता चल गया था कि हम निकले जाने वाले हैं। हम लोग नौ व्यक्तियों ने सामूहिक प्रस्ताव पास किया कि हम ALC के यहां दावा दायर कर देंगे। 19.08.2003 को दावा दायर कर दिया। जुलाई 2003 का वेतन मुझे ALC के यहां संराधन कार्यवाही में मिला। इसके बाद मुझे कोई तनखाह नहीं मिली। 1 अगस्त 2003 से न मुझे कोई वेतन मिला और न कोई काम लिया गया”

It is clearly established, specially by claimants, could prove and establish by way of pleading/documents, evidence filed by them in support of their case on affidavit as well as cross-examination that they have worked continuously for 240 days in last preceding 12 months before termination/retranchment of their services, as such, they cannot claim the benefit as provided u/s 25 F of the Industrial Disputes Act, 1947. Accordingly, they are not entitled for any relief.

### ORDER

In view of the above said findings once the claimants failed to prove and establish that their services while discharging the duties on the posts of Part Time Ball Picker were retrrenched violating the provisions of Section 25-F of the I.D. Act 1947, so they are not entitled for the relief as per the reference order. Present I.D. Case is dismissed. No order as to costs.

Lucknow.

Justice ANIL KUMAR, Presiding Officer

15th July, 2024.

नई दिल्ली, 15 अक्टूबर, 2024

**का.आ. 1984.**—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार जय प्रकाश एसोसिएट्स लिमिटेड; मेसर्स चौबे एंड कंपनी चुनार सीमेंट फैक्ट्री के प्रबंधन के संबद्ध नियोजकों और श्री हरिनारायण यादव के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, लखनऊ, पंचाट (रिफरेन्स नं. 03/2016) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 15.10.2024 को प्राप्त हुआ था।

[सं. एल-29012/46/2015-आईआर(एम)]

दिलीप कुमार, अवर सचिव

New Delhi, the 15th October, 2024

**S.O. 1984.**—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (**Reference No. 03/2016**) of the **Central Government Industrial Tribunal cum Labour Court, Lucknow** as shown in the Annexure, in the Industrial dispute between the employers in relation to **Jai Prakash Associates Limited; M/s Chaubey & Company Chunar Cement Factory** and **Shri Harinarayan Yadav** which was received along with soft copy of the award by the Central Government on 15.10.2024.

[No. L-29012/46/2015-IR(M)]

DILIP KUMAR, Under Secy.

### ANNEXURE

#### CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL –CUM- LABOUR COURT, LUCKNOW

#### PRESENT

JUSTICE ANIL KUMAR

PRESIDING OFFICER

I. D. No. 03/2016

Ref. No. L-29012/46/2015-IR(M) dated 07.01.2016

#### BETWEEN

Shri Harinarayan Yadav S/o Shri Indramuni Yadav, Village-Bakiyabad, Nai Basti, Tehsil - Chunar, Po.-Chunar Cement Factory, MIRZAPUR (UP)-231311



**AND**

1. The Manager, Jai Prakash Associates Ltd., Chunar Cement Factory, Chunar, MIRZAPUR (UP)-231311.
2. MS Chaubey and Co. Chunar Cement Factory, Chunar District, MIRZAPUR (UP) - 231311.

**AWARD**

By order No. L-29012/46/2015-IR (M) dated 07.01.2016 & its subsequent corrigendum dated 23.02.2016 the present industrial dispute has been referred for adjudication to this Tribunal in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 the Industrial Disputes Act, 1947 (14 of 1947) by the Central Government, with following schedule:

*"Whether the action of the M/s. Chaubey and Company in terminating services of Sh. Harinarayan Yadav is legal and justified? If not, to what relief the concerned workman is entitled for?"*

Accordingly, an industrial dispute No. 03/2016 has been registered on 04.02.2016.

On 08/09-02-2014 claimant filed claim statement.

Facts stated in the claim petition are in brief that claimant with the respondent on 01.01.2008; however without following the provision of retrenchment as provided under section 25 (F) of the Industrial Dispute Act 1947 (hereinafter referred to as the Act) his services were dispensed on 01.04.2010.

On behalf of the respondent no. 2 statement of defense filed on 17.04.2017 in which preliminary objection also taken by the respondent no. 2. However, no statement of defence has been filed on behalf of respondent no. 1.

After filing of the written statement by respondent no. 2, workman filed its rejoinder on 12.06.2017; however, in spite of opportunities given to workman, he did not file evidence in support of his case on affidavit.

Accordingly heard respondent no. 2; and gone through the records.

In view of the above said facts the claimant/workman has not field any rejoinder/evidence in support of his case on affidavit, in spite of several opportunities given to him and taking into consideration the law as laid by the Hon'ble High Court in the case of **V. K. Raj Industries v. Labour Court (I) and others 1981 (29) FLR 194** as under:

*"It is well settled that if a party challenges the legality of an order, the burden lies upon him to prove illegality of the order and if no evidence is produced the party invoking juof the Court must fail. Whenever a workman raises a dispute challenging the validity of the termination of service if is imperative for him to file written statement before the Industrial Court setting out grounds on which the order is challenged and he must also produce evidence to prove his case. If the workman fails to appear or to file written statement or produce evidence, the dispute referred by the State Government cannot be answered in favour of the workman and he would not be entitled to any relief."*

In the case of **M/s Uptron Powertronics Employees' Union, Ghaziabad through its Secretary v. Presiding Officer, Labour Court (II), Ghaziabad and others 2008 (118) FLR 1164** Hon'ble Allahabad High Court has held as under:

*"The law has been settled by the Apex Court in case of Shanker Chakravarti v. Britannia Biscuit Co. Ltd., V.K. Raj Industries v. Labour Court and Ors., Airtech Private Limited v. State of U.P. and Ors. 1984 (49) FLR 38 and Meritech India Ltd. v. State of U.P. and Ors. 1996 FLR that in the absence of any evidence led by or on behalf of the workman the reference is bound to be answered by the court against the workman. In such a situation it is not necessary for the employers to lead any evidence at all. The obligation to lead evidence to establish an allegation made by a party is on the party making the allegation. The test would be, who would fail if no evidence is led."*

And by the Hon'ble Allahabad High Court in the case of **District Administrative Committee, U.P. P.A.C.C.S.C. Services v. Secretary-cum-G.M. District Co-operative Bank Ltd. 2010 (126) FLR 519**; wherein it has been held as under:

*"The submission is that even if the petitioner failed to lead the evidence, burden was on the shoulders of the respondent to prove the termination order as illegal. He was required to lead evidence first which he failed. A perusal of the impugned award also does not show that any evidence either oral or documentary was led by the respondent. In the case of no evidence, the reference has to be dismissed."*

As the workman has not filed any statement of claim/oral/documentary evidence, so the present case is liable to be dismissed.

For the foregoing reasons, the case is dismissed and; and the workman is not entitled for any relief.

Award as above.

Lucknow.

Justice ANIL KUMAR, Presiding Officer

21<sup>st</sup> June, 2024

नई दिल्ली, 15 अक्टूबर, 2024

का.आ. 1985.—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सिटी कार्यकारी निदेशक, राजस्थान परमाणु ऊर्जा स्टेशन इकाई, कोटा, (राजस्थान), के प्रबंधन के संबद्ध नियोजकों और महासचिव, परमाणु विद्युत कर्मचारी संघ (सीटू), रावतभाटा, कोटा, के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय- जयपुर, पंचाट(संदर्भ संख्या 77/2014) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 15.10.2024 को प्राप्त हुआ था।

[सं. एल 42012/112/2014-आईआर (डीयू)]

दिलीप कुमार, अवर सचिव

New Delhi, the 15th October, 2024

S.O. 1985.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 77/2014) of the **Central Government Industrial Tribunal cum Labour Court – Jaipur** as shown in the Annexure, in the Industrial dispute between the employers in relation to **The Siti Executive Director, Rajasthan Atomic Power Station Unit, Kota, (Rajasthan), and The General Secretary, Parmanu Vidyut Kamachari Union (CITU), Rawatbhata, Kota**, which was received along with soft copy of the award by the Central Government on 15.10.2024.

[No. L-42012/112/2014-IR (DU)]

DILIP KUMAR, Under Secy.

अनुलग्नक

केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जयपुर

सी.जी.आई.टी. प्रकरण सं. 77 / 2014

राधा मोहन चतुर्वेदी

पीठासीन अधिकारी

रेफरेन्स नं. L-42012/112/2014– IR (DU) दिनांक 07/10/2014

The General Secretary,

Parmanu Vidyut Kamachari Union (CITU)

CITU Union Office, Phase-2,

Rawatbhata (Kota)-323305

v/s

The Site Executive Director,

Rajasthan Atomic Power Station Unit,

Anushakti, Via - Kota

Kota -(Rajasthan)

प्रार्थी की तरफ से : कोई उपस्थित नहीं

अप्रार्थी की तरफ से : श्री सागरमल चौहान एडवोकेट

(अभिभाषक विपक्षी श्री धर्मेन्द्र जैन की ओर से)

: अधिनिर्णय :

दिनांक : 03.07.2024

1. श्रम मंत्रालय भारत सरकार नई दिल्ली द्वारा दि. 7.10.2014 को औद्योगिक विवाद अधिनियम 1947 की धारा 10 1 (d) व (2ए) के अन्तर्गत प्रदत्त शक्तियों के अनुसरण में निम्नांकित विवाद इस अधिकरण को न्यायनिर्णयन हेतु संदर्भित किया :-

“क्या अप्रार्थी प्रबंधन द्वारा प्रार्थी श्री विष्णु शंकर सोनी को पदोन्नति नहीं दिये जाने की कार्यवाही वैध व न्यायोचित है? यदि नहीं तो प्रार्थी किस राहत के व कब से पाने का हकदार है?”

दिनांक 11.5.15 को प्रार्थी ने दावे का अभिकथन प्रस्तुत करते हुए यह कहा है कि 20.6.89 से प्रार्थी की प्रारम्भिक नियुक्ति विपक्षी की केन्टीन में बीयरर के पद पर की गई जिसे 5.6.91 को नियमित कर दिया गया। 12.10.98 से केन्टीन अटेंडेंट सी के पद पर पदोन्नत किया गया। संशोधित जीवनवृत्ति प्रगति योजना के अंतर्गत श्रमिक का वित्तीय पदोन्नयन दि. 12.10.08 से करते हुए अगला वेतनमान दिया गया किंतु पदोन्नती नहीं दी गई। श्रमिक को 1998 के बाद 16 वर्ष में अगली पदोन्नती नहीं दी गई न ही उसे पदोन्नति हेतु विचारित किया गया। अतः वाद प्रस्तुत कर निवेदन है कि प्रार्थी को पदोन्नति न दिये जाने की कार्यवाही को अवैध मानकर प्रार्थी को तकनीशियन पद पर 1.7.2010 से पदोन्नति विगत पारिणामिक लाभों सहित प्रदान करवाई जावे।

3. विपक्षी ने दि. 2.3.17 को प्रस्तुत वादोत्तर में वाद के कथनों को अस्वीकार करते हुए कहा है कि 12.10.08 को प्रार्थी को संशोधित जीवनवृत्ति प्रगति योजना का लाभ दिया गया। परंतु प्रार्थी इस योजना के अंतर्गत जो लाभ देय था, उससे अधिक वेतन पहले से ही प्राप्त कर रहा था। प्रार्थी का वेतन निर्धारण एमएसीपी देने के समय ही कर दिया गया था। इसलिए 1.7.2012 को वेतन निर्धारण का लाभ नहीं दिया गया। 1.7.12 से प्रार्थी को केन्टीन अटेंडेंट -बी के पद पर पदोन्नति दी गई। विपक्षी द्वारा की गई कार्यवाही वैध है तथा समय पर कर्मचारियों की पदोन्नति हेतु विचार दिया गया है अतः दावा निरस्त किया जावे।

3. प्रार्थी ने वादोत्तर के उपरांत 12.7.17 को अतिरिक्त कथन भी प्रस्तुत कर विपक्षी के कथनों को अस्वीकार किया।

4. दि 6.6.2019 से यह प्रकरण प्रार्थी की साक्ष्य हेतु नियत किया जाता रहा। किंतु प्रार्थी ने 1.11.23 तक भी अपनी साक्ष्य प्रस्तुत नहीं की। इसलिए अंतिम अवसर की चेतावनी देते हुए 27.2.24 नियत की गई। 27.2.24 को भी प्रार्थी ने साक्ष्य प्रस्तुत नहीं की। इसलिये प्रार्थी की साक्ष्य का अवसर समाप्त कर दिया गया। विपक्षी ने इस स्थिति में कोई साक्ष्य प्रस्तुत नहीं करना चाहा। प्रार्थी ने लगभग 5 वर्ष की अवधि में एकाधिक अवसर दिये जाने पर भी स्वेच्छया अनुपस्थित रह कर अपने दावे के समर्थन में साक्ष्य प्रस्तुत नहीं की है।

5. प्रार्थी के साक्ष्य के अभाव में यह प्रमाणित नहीं हो सका है कि प्रार्थी को विपक्षी द्वारा पदोन्नति न दिये जाने की कार्यवाही अवैध एवं अनुचित हो। इस स्थिति में प्रार्थी विपक्षी से कोई अनुतोष प्राप्त करने को अधिकारवान नहीं है।

6. संदर्भित विवाद का न्यायनिर्णयन इसी रीति से किया जाता है।

7. अधिनिर्णय की प्रतिलिपि औद्योगिक विवाद अधिनियम की धारा 17 (1) के प्रावधान के अन्तर्गत प्रकाशनार्थ प्रेषित की जावे।

राधा मोहन चतुर्वेदी, पीठासीन अधिकारी

नई दिल्ली, 17 अक्टूबर, 2024

का.आ. 1986.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार प्रशासन, कमांडर स्टेशन मुख्यालय (नागरिक सुरक्षा) चंडी मंदिर कैट पंचकुला के प्रबंधतंत्र, संबद्ध नियोजको और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चंडीगढ़-II के पंचाट (150/2019) प्रकाशित करती है।

[सं. एल-12025/01/2024- आई आर (बी-I)-226]

सलोनी, उप निदेशक

New Delhi, the 17th October, 2024

**S.O. 1986.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.150/2019) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Chandigarh-II* as shown in the Annexure, in the industrial dispute between the management of Admn. Commander Station Head Quarter ( Civil Defence) Chandi Mandir Cantt. Panchkula and their workmen.

[No. L-12025/01/2024- IR (B-I)-226]

SALONI, Dy. Director

**ANNEXURE****IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II,  
CHANDIGARH.****Present: Sh. Kamal Kant, Presiding Officer.**

ID No.150/2019

Registered on:-01.10.2019

Sh. Suraj Pal S/o Sh. Tej Pal Singh, R/o Narsan Khurd Marson, Khurd Haridwar Gurukul Narsan, Uttarakhand.

.....Workman

Versus

1. Admn. Commander Station Head Quarter (Civil Defence), Chandi Mandir Cantt. Panchkula, Haryana.
2. M/s A.A> Foundation for safety, Head Office-5919, DLF City, Face-4, Gurugaon-122022.

....Respondents/Management

**AWARD****Passed on:-22.07.2024**

1. The workman Suraj Pal has directly filed this claim petition under Section 2-A of the Industrial Dispute Act 1947(hereinafter called the Act) for reinstatement in service with full back wages.
2. During the pendency of the proceedings before this Tribunal, learned AR for workman Sh. Jang Bahadur has made a statement that he withdraws the present reference which may be dismissed as withdrawn, which is recorded separately.
3. In view of the statement made by the learned AR for workman, the present claim petition deserves to be dismissed as withdrawn. Accordingly, the instant claim petition registered as ID No.150/2019 stands withdrawn and dismissed. Present reference is therefore dismissed. File after completion be consigned in the record room.
4. Let copy of this award be sent to Central Government for publication as required under Section 17 of the ID Act, 1947.

KAMAL KANT, Presiding Officer

नई दिल्ली, 17 अक्टूबर, 2024

**का.आ. 1987.**—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पंजाब नेशनल बैंक के प्रबंधन, संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण/श्रम न्यायालय पटना के पंचाट 14 (C) of 2018 प्रकाशित करती है।

[सं. एल - 12011/49/2018- आई आर (बी-II)]

सलोनी, उप निदेशक

New Delhi, the 17th October, 2024

**S.O. 1987.**— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.14 ( C ) of 2018 ) of the *Indus.Tribunal-cum-Labour Court Patna* as shown in the Annexure, in the industrial dispute between the management of Punjab National Bank and their workmen.

[No. L-12011/49/2018- IR (B-II)]

SALONI, Dy. Director

## ANNEXURE

### BEFORE THE PRESIDING OFFICER INDUSTRIAL TRIBUNAL, PATNA.

#### Reference Case No.- 14 (C) of 2018

Between the management of (1) Circle Head, Punjab National Bank, Circle Office, G.M Road, P.O- Lalbagh, Darbhanga-846004 (2) The Manager, Punjab National Bank, Ladania Branch, At & P.O- Ladania, P.S- Ladania, Dist.- Madhubani-847232 and their workman Sri Krishna Balram Mandal represented through the President, BankEmployees Federation, Bihar,Saboo Complex, 2<sup>nd</sup> Floor, Behind Republic Hotel, Patna (Bihar)- 800001.

For the management:-	Sri Ritesh Kumar, Sr. Manager, Law. Mrs. Preeti, Dy. Manager, HRD Sri Nand Mohan Das, Sr. Manager.
For the workman:-	Sri B. Prasad, President, Bank Employees Federation, Bihar.
Present:-	Manoj Shankar Presiding Officer, Industrial Tribunal, Patna.

## A W A R D

**Patna, dated- 17th September, 2024**

By the adjudication order no.- L-12011/49/2018-IR (B-II) New Delhi, dated- 14.11.2018 the Govt. of India, Ministry of Labour, New Delhi has referred under clause (d) of sub-section-(1) and sub-section-(2A) of section-10 of the Industrial Dispute Act, 1947, ( hereinafter to be referred to as “the Act”), the following dispute between (1) Circle Head, Punjab National Bank, Circle Office, G.M Road, P.O- Lalbagh, Darbhanga-846004 (2) The Manager, Punjab National Bank, Ladania Branch, At & P.O- Ladania, P.S- Ladania, Dist.- Madhubani-847232 and their workman Sri Krishna Balram Mandal represented through the President, BankEmployees Federation, Bihar,Saboo Complex, 2<sup>nd</sup> Floor, Behind Republic Hotel, Patna (Bihar)- 800001 for adjudication to this tribunal:-

## SCHEDULE

“Whether the action of the management of Punjab National Bank, in not regularizing service of Shri Krishna Balram Mandal, Part Time Sweeper alleged to be working from May 2013 at

Ladania Branch, Dist.- Madhubani, is justified? If not, to what relief the workman concerned is entitled to?”

2. As per the statement of claim filed on 28.03.2019, the case of the applicant Sri Krishna Balram Mandal is that he was orally appointed to discharge the duties of a Part Time Sweeper at Ladania Branch from May 2013 as there was no Part Time Sweeper. It is further asserted that Krishna Balram Mandal used to discharged his duties from

9.00 A.M to 5.30 P.M regularly and some times even beyond that as per requirement. It is further asserted that the Krishna Balram Mandal used to discharged his duties in the said branch Viz sweeping and cleaning the Branch Premises, Cleaning the counters and strong room of the branch, served water, tea to the members of staff and customers etc. The above duties are performed by the Krishna Balram Mandal at the instruction of the branch manager for which he was being paid wages @ Rs. 144/- per day. It is further asserted that the duties of the Krishna Balram Mandal are perennial in nature and he has worked continuously from May-2013 till date. It is further asserted that Krishna Balram Mandal met with the higher officials of the bank for regularisation of his services but he was unheard then he caused Industrial Dispute before conciliation officer which culminated in reference before this tribunal. It is further asserted that the duties of the Krishna Balram Mandal are identical to that of a permanent workman and management did not pay equal wages as per the principle of 'Equal Pay for Equal work'. So action of the management in not regularising the services of the applicant is neither legal nor justified as management resorted unfair labour practice as per the schedule V of the I.D. Act although a large number of the post of part time sweeper existed since long. Accordingly, the applicant Krishna Balram Mandal prayed for regularisation of services as Part Time Sweeper, payment of due wages for the period of his working and payment of a sum of Rs. 10,000/- for contesting the dispute.

3. On the other hand, the management bank filed written statement and submitted therein the applicant the present issue can't be treated as workman as per section-2(s) of the Industrial Dispute Act because he was just a casual worker whose services were utilized as and when required for which he was duly compensated. Moreover, there was no employer – employee relationship between the management bank and complainant, accordingly the alleged dispute does not come up under the purview of Industrial Dispute as per section-2(k) of the Industrial Dispute Act, 1947 and so claim of the applicant is not maintainable. It is further asserted that Krishna Balram Mandal was engaged for doing work in leave gap arrangement by the branch office Ladania for which he was duly compensated. It is further asserted that Punjab National Bank has regular recruitment policy & procedure for filling up of permanent posts in subordinate cadre circulated from time to time. It is further asserted that Circle Office, Darbhanga initiated the recruitment process for filling up of 45 posts of Part Time Sweeper vacancies at different branches by inviting applications from the eligible candidates. Krishna Balram Mandal had also applied for the post of Part Time Sweeper. It is further asserted that as per bank's recruitment policy & procedure merit list was prepared category / district / vacancy wise separately accordingly the list of approved candidates has been displayed on the notice board of the bank. It is further asserted that since Krishna Balram Mandal has not been selected in the recruitment process, he was aware of the consequences of the working on daily wages, hence union has no right to claim for regularisation or employment in service of Sri Krishna Balram Mandal. It is further asserted that the claim as asserted by the Krishna Balram Mandal in his application is denied by the management bank. applicant was not appointed as part time sweeper as stated rather he was engaged for doing the work cleaning / sweeping of branch premises on daily wages and he was duly compensated. Complainant was never appointed as sweeper on 1/3<sup>rd</sup> scale wage temporarily. He was engaged on leave gap arrangement for which he was duly compensated. So he does not have any legal right for confirmation / regularisation of his services. It is further asserted that management bank has not violated any provision of the I.D. Act. Accordingly applicant is not entitled for any regularisation of his service or reinstatement in the service.

4. Having gone through the statement of claim of the Krishna Balram Mandal and written statement filed by the management the following points emerge for adjudication:-

- (i) "Whether the applicant Krishna Balram Mandal is covered under the provision of section-2(s) of the I.D Act as a workman and his claim is an Industrial Dispute as per section-2(k) of the I.D. Act.?"
- (ii) "Whether the action of the management of Punjab National Bank, in not regularizing service of Shri Krishna Balram Mandal, Part Time Sweeper alleged to be working from May 2013 at Ladania Branch, Dist.- Madhubani, is justified? If not, to what relief the workman concerned is entitled to?"

5. In order to establish the claim of the Krishna Balram Mandal applicant side examined one witness namely Krishna Balram Mandal as (W.W-1 ) the applicant besides, oral evidence. He also filed some documents and get it marked Extsas :-

- |                |  |
|----------------|--|
| (i) Ext.-W     | Requisition for the payment of book binding work given by the Krishna Balram Mandal on 27.09.2017. |
| (ii) Ext.-W/1  | Notification of for filling up 45 posts of part time sweeper under Darbhanga region.               |
| (iii) Ext.-W/2 | Application form filled up and signed by the Krishna Balram Mandal on 10.01.2017.                  |

- |        |                  |   |
|--------|------------------|---|
| (iv)   | Ext.-W/3         | Call letter dt- 09.05.2017 in the name of Krishna Balram Mandal issued by Chief Manager, PNB, Darbhanga.  |
| (v)    | Ext.-W/3-1       | Working certificate issued by the Branch Manager, PNB, Ladiana, Dist.- Madhubani on 23.05.2017 relating to the Krishna Balram Mandal.   |
| (vi)   | Ext.-W/3-2       | Photo copy of School Leaving Certificate in the name of Krishna Balram Mandal.  |
| (vii)  | Ext.-W/3-3       | Photo copy of Caste Certificate issued by Govt. of Bihar, office of Madhubani Anumandal, Jai Nagar, Block, Ladiana on 14.01.2016 in the name of Krishna Balram Mandal.  |
| (viii) | Ext.-W/3-4       | Recommendation letter written and signed by the Senior Manager, PNB, Ladiana Branch given to Senior Manager, HRD Department, Mandal Office, Darbhanga regarding appointment of Krishna Balram Mandal on the post of Sweeper.  |
| (ix)   | Ext.-W/4         | Statement of account of Krishna Balram Mandal for the period of 07.11.2016 to 30.03.2019 regarding wage payment given by the bank i.e marked in green colour.   |
| (x)    | Ext.-W/5 to W/25 | Payment vouchers of dt- 27.02.2017, 10.03.2017, 07.04.2017, 17.05.2017, 18.05.2017, 15.06.2017, 10.07.2017, 09.08.2017, 19.08.2017, 01.12.2017, 30.12.2017, 30.12.2017, 30.12.2017, 02.01.2018, 02.02.2018, 01.03.2018, 31.03.2018, 01.06.2018, 30.06.2018, 01.08.2018, 31.08.2018, 01.11.2018, 01.02.2019. |

6. On the other hand management side examined just one witness namely Nand Mohan Das, HR Senior Manager, Regional Office, PNB, Darbhanga (M.W-1 ). Management side did not file any documents.

7. First of all this tribunal scrutinizes the evidence of applicant Sri Krishna Balram Mandal ( W.W-1 ) who deposed before this tribunal on 25.05.2022 and stated that he is doing work of part time sweeper in Ladiana Branch, Punjab National Bank, Madhubani from 02.05.2013. he further stated that he used to discharged his duties from 8.00 A.M to 5.30 P.M and he was getting Rs. 144/- per day in the year 2013 and he received cash payment till the year 2017 and thereafter he received payment in his bank account. This witness further stated that besides working of part time sweeper, he also stitched vouchers tagging working for this work he was receiving Rs. 2000/- separately and he proved payment his requisition dt- 27.09.2017 for the payment of book binding work marked as Ext.-W. This witness further stated that no permanent part time sweeper posted in the said branch. This witness also stated that when the vacancy for part time sweeper in year 2017 was notified. He also applied for that post and he prove notification of the vacancy marked as Ext.-W/1 and he also proved his application for and call letter, certificate issued by then Branch Manager, SLC ( School Leaving Certificate ), caste certificate issued by circle officer marked as Ext.- W/2, W/3, W/3-1, W/3-2, W/3-3, W/3-4 respectively. This witness further stated that he also maintaining of S.B account in the said branch bearing no.- 2415001500001696 and he filed the copy of statement of account of the period of 07.11.2016 to 30.03.2019 marking his wage payment entry of the basis book in green colour and the proving the same as Ext.- W/4. He further proved the payment voucher dt-27.02.2017, 10.03.2017, 07.04.2017, 17.05.2017, 18.05.2017, 15.06.2017, 10.07.2017, 09.08.2017, 19.08.2017, 01.12.2017, 30.12.2017, 30.12.2017, 30.12.2017, 02.01.2018, 02.02.2018, 01.03.2018, 31.03.2018, 01.06.2018, 30.06.2018, 01.08.2018, 31.08.2018, 01.11.2018, 01.02.2019 marked as Ext.- W/5 to W/5-25 series. This witness further stated that when to the bank on 26.05.2022 he was stopped from working however, he had came to deposed before this tribunal 25.05.2022. On query by the tribunal this witness stated he can filed the prove of his leave application filed in the bank of dt- 25.05.2022. This witness further stated that when he was stopped from the work on 26.05.2022 he filed complaint petition in the tribunal today on

11.07.2022. This witness further stated that why he in the received any notice, nor notice before stopping him for work.

In cross-examination this witness categorically stated in para-14 & 15 that he has not receiving any joining letter and there was no attendance register in the bank. This witness also admits in para-16 of the cross-examination he is the member of All India Federation and he used to pay Rs. 15/- membership fee P.A and he can filed receipt. This witness further admits in cross-examination that he has applied for the vacancy of part time sweeper and he participated in the reading and writing test on the basis of call letter but he was not declared successfully. This witness further admits in para-20 of the cross-examination he has raised his dispute on 20.02.2018 and the result of part time sweeper was published on 15.02.2017 and when he was not figured in the selected list of part time sweeper result, he raised this dispute and he further denied that is claim is wrong.

8. On the other hand management examined one witness namely Nand Mohan Das ( M.W-1 ) who deposed before this tribunal on 11.08.2022 and stated that he is doing work in the HRD section of the bank since 2011. This witness further stated that there is a recruitment procedure of appointment of part time sweeper first of all if vacancy is accrued it is advertised and eligible candidates fill application and on the basis of there educational qualification and reading and writing test a merit list published on the basis of category to fill the vacancy. This witness further stated that there is no procedure of oral appointment in the PNB. This witness further stated that Krishna Balram Mandal has also participated in the part time sweeper recruitment process and he was also called for test but he was not found successful in the merit list. This witness further stated that if the bank engage a person on the basis of leave gap arrangement, bank used to pay wage for the work to the person at the rate of daily basis but no attendance register of the daily wager is maintained in the bank. This witness further stated that the claim of the applicant is totally false that he has worked after year 2019.

In cross-examination this witness categorically admits that in para-17 that as per the claim of the applicant he has shown his working in the bank from the year 2013 to 2019 and he categorically stated in para-14 of the cross-examination that he can't say whether any permanent sweeper was posted in the Ladiania Branch when the workman started working there. This witness admits in para-15 of the cross-examination that the father of the applicant was posted in that branch on the post of part time sweeper and when ever he was on leave, this applicant performed the duty of part time sweeper. This witness stated in para-18 that the voucher was showing him is the salary payment of Rs. 3615/- given to the applicant i.e earlier marked as Ext.-W/5-20 and he also admits that the vouchers of page 43 & 44 is the also the salary payment in the name of applicant i.e earlier marked as Ext.-W/5-21 and W/5-22 respectively. In para-20 of the cross-examination this witness admits that the payment voucher of page 47 is of Rs. 2585 i.e in favour of the applicant earlier marked Ext.- W/5-25. This witness also admits in para-22 of the cross-examination that on the basis of caste certificate the workman comes under schedule caste ( SC) category and this witness categorically stated that this is not fact that after the death of the father of the applicant bank took his service as part time sweeper. This witness also stated in para-24 that since the workman was not the employee of the bank so there is no question of issuing any notice or notice pay and this witness further stated in para-27 that this is not fact that bank has violated the section 33A of the I.D. Act.

9. It is argued from the workman side that Krishna Balram Mandal was orally appointed by the Branch Manager of Ladiania for taking the duty of part time sweeper from May 2013 and he was getting Rs. 144/- per day. Workman made prayer to the higher authority of the bank for regularisation of his service but it was of no avail then workman raised this dispute that is referred for adjudication here in this tribunal. It is further argued that during pendency of the reference his services of the workman was terminated and the workman was stopped from payment of wages from 01.02.2019 and he was finally stopped from the work from 25.05.2022 which was contravention of the provision of section 33A of the I.D.Act. Workman Krishna Balram Mandal thoroughly supported his claim in his evidence and by his documentary evidence vide the payment voucher and statement of bank account in which he was getting has salary, the entry of payment in the pass book is shown in green colour i.e Ext.- W/4 and he also filed payment voucher Ext.-W/5 to W/5-25 showing he was getting payment from bank monthly basis and the payment vouchers that was proved by the workman is also admitted by the management witness in his evidence vide para-18 of the cross-examination. It is also argued that the claim of the management that Krishna Balram Mandal does not come under the purview of section-2(s) of the I.D.Act is totally misconceived because Krishna Balram Mandal was duly orally engaged by the Ladiania Branch Manager of the management bank for taking his service as part time sweeper when there was no permanent part time sweeper was posted and for which he was being paid initially Rs. 144/- per day and later on he was receiving payment of monthly basis and by virtue of his work and as per the provision of section-2(s) Krishna Balram Mandal attains the status of workman and his dispute is also is an Industrial Dispute as per section-2(k) of the I.D. Act. It is further argued that the management violated the provision of section-25(F) of the I.D. Act when the workman was stopped from working all of sudden without giving any notice and thus management resorted unfair labour practice as per section-2(T) of the I.D. Act. So workman is entitled for his reinstatement and regularisation of his service as part time sweeper under 1/3 pay scale.

10. On the other hand it is argued from the management side Krishna Balram Mandal was engaged by the Ladiania Branch of PNB for doing workon leave gap arrangement for which he was duly compensated. It is further argued that Krishna Balram Mandal also applied for the appointment of Part time sweeper in the recruitment process



in the year 2017 but he was not selected in merit list and when selected candidates was duly appointed in the Ladania Branch the service of Krishna Balram Mandal was not taken up by the bank. Krishna Balram Mandal categorically admits in this evidence when he was not found selected in merit list, he raised this dispute. He was well aware of his engagement in the Ladania Branch that was purely on daily basis and on the leave gap arrangement. Krishna Balram Mandal has no right to put his claim for reinstatement beyond the provision of the bank norms. Hence bank has not violated any provision of I.D. Act. It is further argued that the Hon'ble Supreme Court in Civil Appeal No.- 1878 of 2016 ( Oil and Natural Gas Corporation Vs. Krishna Gopal &Ors ) after discussing the various judgements including that of Hari Nandan Prasad vide its judgement dt- 07.02.2020 has held that:-

- (i) the power of the Labour Court and Industrial Court cannot extend to a direction to order regularisation, where such a direction would in the context of public employment offend the provisions contained in Article 14 of the Constitution;
- (ii) The statutory power of the Labour Court or Industrial Court to grant relief to workmen including the status of permanency continues to exist in circumstances where the employer has indulged in an unfair labour practice by not filling up permanent post even though such posts are available and by continuing to employ workman as temporary or daily wage employees despite their performing the same work as regular workmen on lower wages;
- (iii) The power to create permanent or sanctioned posts lies outside the judicial domain and where no posts are available, a direction to grant regularisation would be impermissible merely on the basis of the number of years of service;
- (iv) In order to constitute an unfair labour practice under section 2(ra) read with item 10 of the Vth Schedule of the I.D Act, the employer should be engaging workmen as badlis, temporaries or casuals, and continuing them for years, with the object of depriving them of the benefits payable to permanent workmen.”

It is further argued that Krishna Balram Mandal was not successful in the recruitment process of the part time sweeper that was advertised in the year 2017 and when the post of PTS at Ladania Branch was filled by the selected candidates the bank did not take the service of Krishna Balram Mandal so bank has not laid any unfair practice i.e evident from the ruling as stated above. Accordingly Krishna Balram Mandal has no legal right for confirmation / regularisation of his service for as per this claim.

11. Considering all the facts and materials on record as discussed above and submissions as advanced on behalf of the both the sides, this tribunal takes the first issue whether applicant Krishna Balram Mandal is regarded as in the category of the workman as per section 2(s) of the I.D Act or not.

Section-2(S) says:- **[ 2(S) “workman” means any person ( including an apprentice ) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purpose of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person—**

- (i) Who is subject to the Air Force, Act, 1950 (45 of 1950 ), or the Army Act, 1950 (46 of 1950 ), or the Navy Act, 1957 (62 of 1957 ); or
- (ii) Who is employed in the police service or as an officer or other employee of a prison, or
- (iii) Who is employed mainly in a managerial or administrative capacity, or
- (iv) who, being employed in a supervisory capacity, draws wages exceeding 56a
- (v) [ ten thousand rupees ] per mensem or exercise, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.]

On analysing section-2(S) of the I.D.Act it is evident if a person is engaged in any banking industry orally or by way of appointment letter and he performed any manual, unskilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied and if his service is stopped by way of dismissal, discharged or retrenchment, he attains the status of the workman. Here in the instant case Krishna Balram Mandal orally appointed by the Branch Manager, Ladania branch of management bank and took his services of part time sweeper and for which payment was made to him through voucher and crediting the salary payment in the account of Krishna Balram Mandal that is shown by the Krishna Balram Mandal through oral and documentary evidence i.e marked Ext.-W/5 to W/5-25 and Ext.-W/4 so the claim of the management, applicant Krishna Balram Mandal does not come under the purview of workman as per section-2(S) of the I.D.Act is not sustainable and acceptable and since Krishna Balram Mandal is a workman under the bank industry he raised his dispute for a regularisation i.e Industrial Dispute as per section 2(K) of the I.D.Act so this issue is decided in favour of the workman.

12. So far as the issue no.-2 is concerned i.e to be adjudicated whether the action of the management of PNB not regularisation the service of Krishna Balram Mandal working from May 2013 at Ladania Branch is justified. In this context workman Krishna Balram Mandal claims in his evidence that he was orally appointed in the Ladania Branch of the management Bank from May 2013 and he was discharging his duties from 8.00 A.M to 5.30 P.M at the same time he also claims he has doing the duty of part time sweeper. However, management side claims in its written statement and oral evidence Krishna Balram Mandal was engaged as a daily wager on leave gap arrangement requirement for which he was duly paid. This tribunal finds that workman claims he was getting Rs. 144/- per day initially May 2013 but no such proof regarding payment of wages, he produced before this tribunal however, he has furnished some payment voucher i.e given by the bank and same amount is credited in his S.B Account from the period of 23.12.2016 to 01.02.2019 i.e evident from Ext.-W/4 the statement of bank account and he was paid by the bank accordingly for the sweeper and cleaning of the branch and it is evident from the entries of payment in the bank account of workman. This tribunal further finds that workman did not produced any chit of paper regarding payment of wages from May 2013 to November-2016 so his oral claim of working during this period can't be accepted because when he can file the payment voucher of the period of the 2017 to 01.02.2019 than how he can not produced any payment proof for the period of May 2013 to November 2016. Hence the claim of workman regularly working from May 2013 to November 2016 is not established at all. He has working in the said branch for the sweeper and cleaning purposes that is established through his payment i.e shown by Ext.-W/5 to W/5-25 series. This tribunal further finds that applicant workman admitted this fact that he has also participated in the recruitment process that was published in the year 2016 but he could not be succeeded in the test that is also admitted by the management side, this assertion of both the sides does indicate that there was vacancy of permanent part time sweeper in the Ladania branch for which management bank had initiated, recruitment process from November 2016 the notification of the vacancy marked as Ext.-W/1 does show applicant filed his application for the Madhubani Dist. where total vacancy was 11 ( Eleven ) ( 07 unreserved, 03 OBC, 01 SC or O ST ) workman was in SC category as per his certificate marked as Ext.- W/3-3. It is also admitted by the workman that he was not figured in the merit list and when the selected candidates joined Ladania Branch February-2019, he was stopped from the working as per management claim. This tribunal finds that workman was well aware that he was engaged temporarily and as a part time sweeper until the post is filled that's why he also applied for the post of part time sweeper but he could not succeed. This tribunal further finds that workman categorically admitted in his evidence when he could not succeed in the recruitment of process part time sweeper then he raised the instant dispute. This attitude of workman shows he tried to continue his service in the bank through other mode however, management bank under due procedure and process of part time sweeper invited the applications of eligible candidates and after conducting reading and writing test and scrutinizing the educational qualification and caste certificate, declared the merit list of 45 part time sweeper as per notification in which workman was not selected so management has not violated any provision of I.D. Act and did not play any unfair means for not regularisation the services of workman as per claim of the workman because management has gone through the recruitment process for the appointment of 45 part time sweepers including 11 post for the Madhubani Dist. in which workman has applied. This tribunal further finds that taking the advantage of not being selected in the merit list workman raised his dispute to put pressure upon the management bank by other mode. However, he was well aware the post of permanent part time sweeper for the Ladania Branch will be filled through recruitment process and one selected candidates has joined Ladania Branch in February 2019. This tribunal further find that the ruling of the Hon'ble Supreme Court as filed by the management side is applicable in the instant case also in which it is categorically held that the power to create permanent or sanctioned posts lies outside the judicial domain and where no posts are available, a direction to grant regularisation would be impermissible merely on the basis of the number of years of service. In the instant case there was one post vacant for the Ladania Branch and of other branch as the management bank filled all the 45 vacancy of part time sweeper through recruitment process that was initiated in the last months of 2016 and concluded in the 2018 and in Ladania Branch, one part time sweeper also joined there so claim of workman for regularisation and to continue in the service of the bank is not at all legal and justified. This tribunal further finds and hold that the management was certainly engaged the workman as leave gap arrangement as per claim of the management until the post of part time sweeper is filled in the said Ladania Branch and the workman was duly paid for his service given to the bank for the sweeping and cleaning purposes.

13. Thus on scanning of all the materials on record as discussed above, this tribunal finds and hold that workman's claim for regularisation of his service and to continue the service in the bank is not established at all from the workman side and this tribunal finds and hold that management bank has not violated of any provision of the I.D Act. Accordingly the action of the management PNB in not regularising the service of Krishna Balram Mandal as part time sweeper is justified i.e within norms and procedure of banking rules and regulation. But at the same time this tribunal finds that the management bank reposed trust in the workman Krishna Balram Mandal that's why Ladania Branch of management bank took his services of temporary part time sweeper work regularly since the vacancy of 45 post of part time sweeper was notified and he was never outed from the duty of temporary part time sweeper work by the management bank until the regular appointment is made in February 2019. So for this service of workman Krishna Balram Mandal he should be compensated by the management bank by paying him Rs. 2,00,000/- ( Rs Two Lakhs Only ). Hence this tribunal direct the management bank to pay Rs. 2,00,000/- ( Rs. Two Lakhs only ) to Krishna Balram Mandal within three month's from date of publication of gazette of award. This award is effected after date of publication in gazette.

This is my award accordingly.

Dictated & Corrected by me.

17.09.2024

MANOJ SHANKAR, Presiding Officer

नई दिल्ली, 17 अक्टूबर, 2024

**का.आ. 1988.**—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पंजाब ने” इन्दु बैंक के प्रबंधतंत्र, संबद्ध नियोजको और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण/श्रम न्यायालय पटना के पंचाट Complaint Case No. 02 (C) of 2022 Ref. No. 14 (C) of 2018 प्रकाशित करती है।

[सं. एल - 39025/01/2024- आई आर (बी-II)-39]

सलोनी, उप निदेशक

New Delhi, the 17th October, 2024

**S.O. 1988.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Complaint Case No. 02 (C) of 2022 Ref. No. 14 (C) of 2018) of the *Indus.Tribunal-cum-Labour Court Patna* as shown in the Annexure, in the industrial dispute between the management of Punjab National Bank and their workmen

[No. L-39025/01/2024- IR (B-II)-39]

SALONI, Dy. Director

#### ANNEXURE

#### BEFORE THE PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, PATNA

#### Complaint Case No.- 02(C) of 2022

#### Reference Case No.- 14 (C) of 2018

The workman of Sri Krishna Balram Mandal, S/O- Sri Ram Kishore Mandal, Vill. + P.O Mahatha, P.S-Ladania, Dist.- Madhubani -847232 ( Complainant ) Versus The Circle Head, Punjab National Bank, Circle Office, Darbhanga, Laheria Sarai, Commercial Chowk, Darbhanga-846001 ( Opposite party)

For the management:- Sri Ritesh Kumar, Sr. Manager Law.

For the workman:- Sri B. Prasad, President, Bank Employees Federation, Bihar.

Present:- **Manoj Shankar Presiding Officer,  
Industrial Tribunal, Patna.**

#### ORDER

Patna, dt- 17th September, 2024.

1. This complaint case is filed before this tribunal on 11.07.2022 by the workman Krishna Balram Mandal against the management bank u/s-33 (A) of the Industrial Dispute Act, 1947 arising out of Reference Case No.- 14(C) of 2018.

2. As per the complaint petition, the case of workman is that complainant had caused an Industrial Dispute raised before the Assistant Labour Commissioner (C), Patna which culminated in reference before this tribunal i.e Reference Case No.- 14(C) of 2018. It is further asserted that when the dispute was referred for adjudication to this tribunal, the workman was stopped for payment of wages from 01.02.2019 and further workman was stopped from working from 25.05.2022 in contravention with the provision of section 33 of the I.D. Act. It is further asserted that management has taken action only with a view to take make reference infructuous and accordingly it is prayed to decide the complaint.

3. On the other hand, the management bank filed reply to this complaint and mentioned therein the management has already filed written statement in reference case disclosing the fact that workman was engaged as a daily wager on leave gap arrangement for which he was duly paid. When the vacancy of 45 Part Time Sweeper was advertised in the last month of 2016, workman Krishna Balram Mandal also applied for the said post and he participated in the recruitment process after receiving call letter, but he could not succeed in the merit list of selected candidates and then he raised dispute. When the permanent part time sweeper was posted in the Ladania Branch where workman was engaged on leave gap arrangement, he was disengaged from his service from 01.02.2019 and since then workman did not performed any duty in the branch of management bank so his claim is totally false and fabricated. He was stopped from working from 25.05.2022. The fact is that the service of workman was not utilized after 01.02.2019. If the workman was ever engaged by the branch i.e purely on the requirement of the work on leave gap arrangement basis. So this complaint is not at all sustainable and he should be dismissed.

4. In order to establish his claim, workman Krishna Balram Mandal deposed before this tribunal as W.W-1 on 27.02.2023 who stated in his evidence that he was doing work of Part Time Sweeper at Ladania Branch of PNB from May 2013 and initially he was getting cash payment for his service and from year 2017 he received wage payment in his account from the bank side. This witness further stated that he has raised his dispute in the year 2018 on the basis of his dispute the appropriate Govt. referred his grievance for adjudication that is Reference Case No.- 14(C) of 2018. This witness further stated that his payment was stopped from 01.02.2019 but he received cash once in a while on query of this tribunal this witness categorically stated that he has not filed any complaint to the bank for no regular payment.

In cross-examination this witness admits that he has applied for the post of Part Time Sweeper in year 2017 but he could not finally selected. In para-10 of the cross-examination this witness categorically admits that one Guddu Kumar was posted as part time sweeper in Ladania Branch in the year 2019 and there was only one post in the said branch. This witness further denied that this is not fact that when the permanent part time sweeper joined the Ladania Branch, he was not engaged further by the bank. In para-12 of the cross-examination this witness stated that he received cash payment after February 2019 some times through vouchers and some times received cash payment in the name of others but he denied that this is not fact he never received cash payment and also admits that he can't file any vouchers of cash payment.

5. On the other hand management side examined Nand Mohan Das as M.W-1 who deposed before this tribunal on 27.03.2023 and he stated that he is posted in HR Department of Circle Office, P.N.B, Darbhanga from 02.05.2018 an advertisement was published for the post of part time sweepers for Darbhanga region Mandal in the year 2016 and Krishna Balram Mandal was also participated in the said recruitment process but he could not succeed. This witness further stated that Ladania Branch has engaged Krishna Balram Mandal for the work of part time sweeper prior to the 2019 and when permanent part time sweeper post was filled, Ladania Branch bank did not take any service from Krishna Balram Mandal from January 2019. The claim of the workman is totally false.

In cross-examination this witness categorically stated in para-15 that the claim of the workman, he was terminated is totally false and he further admits in para-17 that when the permanent part time sweeper was posted in the branch, no service was taken from the Krishna Balram Mandal. In para-20 of the cross-examination this witness categorically admitted that there was no need to serve any notice to the workman.

6. M.W-2 Dhiraj Kumar is the Senior Manager, P.N.B, Branch Ladania who stated in his evidence on 17.05.2023 that he is posted in Ladania Branch from July-2021. One Guddu Kumar permanent part time sweeper is working in his branch for the last five years. No other person has been ever engaged for part time sweeper since Guddu Kumar joined the branch. The claim of the workman, he was stopped from working from 25.05.2022 is totally false.

In cross-examination this witness categorically admits that he knows the Krishna Balram Mandal because there is pension account of his mother in his branch. This witness further stated in para-8 that he has no knowledge that Krishna Balram Mandal has discharged duties from 2013 to 2019. In para-10 of the cross-examination this witness categorically stated that workman never worked in his branch during his tenure so there is no question of termination.

7. Considering all the facts and materials available on record as discussed above, this tribunal finds that one Reference Case No.- 14(C) of 2018 was raised by Krishna Balram Mandal for the regularisation of his service in the management bank and that is separately decided by this tribunal. This tribunal further finds that workman filed complaint petition u/s-33 A of the I.D Act on 11.07.2022 pleading therein he was stopped from working from 25.05.2022 this tribunal finds that complainant has not given any clear picture in his complaint petition rather took two points in his complaint he was stopped from payment of wages from 01.02.2019 and further he was stopped from working from 25.05.2022. However, the workman in his evidence categorically admits that he has received some time cash payment from the bank after February 2019 but no proof is given by the workman in this regard either oral from other witnesses or by documents. Moreover, workman himself admits in cross-examination he has applied for the part time sweeper post in the year 2017 but he could not succeed and one Guddu Kumar permanent part time sweeper joined the Ladania Branch in 2019 and there was one post in Ladania brandh. So the claim of workman, he was

attached with the Lladania branch for a duties of part time sweeper after 01.02.2019 is not very convincing and acceptable because that branch had no occasion to take the services of Krishna Balram Mandal after the joining of permanent part time sweeper Guddu Kumar in the January 2019 i.e duly supported by management witness and Ladania Branch Manager also corroborated this fact that Guddu Kumar was doing duties of part time sweeper after joining from January 2019 and workman Krishna Balram Mandal never worked in Ladania Branch thereafter, so there is no question of any termination.

8. Thus on scrutinizing all the facts and material available on record, this tribunal finds and hold that workman has not come up with clean hand rather he suppressed the real facts and just to gain something extra. He filed this complaint case with fabricated plea, accordingly this is the considered opinion of the tribunal the complaint petition as filed by the workman Krishna Balram Mandal U/S-33(A) of the I.D.Act has no merit. So it is dismissed. This order is the part of the award passed in Reference Case No.- 14(C) of 2018. This order is effected after date of publication in gazette.

This is my order accordingly.

Dictated &Corrected by me.

17.09.2024

MANOJ SHANKAR, Presiding Officer

नई दिल्ली, 17 अक्टूबर, 2024

**का.आ. 1989.**—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मालिक, मैसर्स आनंदमयी इंजीनियर्स, मुलगाडा, विशाखापत्तनम, आंध्र प्रदेश, के प्रबंधन के संबद्ध नियोजकों और श्री अनूप दास, कामगार, के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह-श्रम न्यायालय- हैदराबाद पंचाट(संदर्भ संख्या 4/2024) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 17.10.2024 को प्राप्त हुआ था।

[सं. एल - 42025-07-2024-183-आईआर (डीयू)]

दिलीप कुमार, अवर सचिव

New Delhi, the 17th October, 2024

**S.O. 1989.**—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. ID. No. 4/2024) of the **Central Government Industrial Tribunal cum Labour Court- Hyderabad** as shown in the Annexure, in the Industrial dispute between the employers in relation to **The Proprietor, M/s Anandamovee Engineers, Mulagada, Visakhapatnam, Andra Pradesh, and Shri Anup Das, Worker**, which was received along with soft copy of the award by the Central Government on 17.10.2024.

[No. L-42025-07-2024-183-IR (DU)]

DILIP KUMAR, Under Secy.

#### ANNEXURE

#### IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT AT HYDERABAD

Present: - **Sri IRFAN QAMAR**

Presiding Officer

Dated the 28<sup>th</sup> day of August, 2024

**INDUSTRIAL DISPUTE No. 4/2024**

Between:

Sri Jitendra Kumar Jena,  
D.No.60-17-18, Prakash Nagar,  
Malkapuram Viskhapatnam,

Andra Pradesh-530011.

.....Petitioner

AND

The Proprietor,  
M/s Anandamovee Engineers,  
Flat No.G-4, B.G.M Patruddu Residency,  
Near Likitha Theatre, Mulagada,  
Viskhapatnam, Andra Pradesh-530011.

...Respondents

Appearances:

For the Petitioner : None

For the Respondent : None

### A W A R D

The Government of India, Ministry of Labour by its order No.8/2/2024-B1 dated 18.01.2024 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal between the management of M/s Anandamovee Engineers and their workmen. The reference is,

### SCHEDULE

“Whether the action of the management of M/s Anandamoyee Engineers, Visakhapatnam in terminating the services of Sri Jitendra Kumar Jena and not paying the terminal benefits at a rate of Rs. 695/- is legal and justified? If not, what relief the workman is entitled to?”

The reference is numbered in this Tribunal as I.D. No 5/2024 and notices were issued to the parties concerned.

2. Petitioner absent. Record shows that, on previous date, notice issued to petitioner served but petitioner is absent. Petitioner is not present today also and did not file any claim statement. It seems that petitioner is not interested in pursuing his case. In absence of Claim Statement and absence of petitioner, a ‘No-Claim’ award is passed.

Award is passed accordingly. Transmit.

Typed to my dictation by Shri Vinay Panghal, LDC corrected and signed by me on this the 28<sup>th</sup> day of August, 2024.

IRFAN QAMAR, Presiding Officer

#### Appendix of evidence

Witnesses examined for the

Witnesses examined for the

Petitioner

Respondent

NIL

NIL

#### Documents marked for the Petitioner

NIL

#### Documents marked for the Respondent

NIL

नई दिल्ली, 17 अक्टूबर, 2024

**का.आ. 1990.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार केन्द्रीय भेड़ एवं लकड़ी अनुसंधान संस्थान के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम

न्यायालय, जयपुर के पंचाट (पहचान संख्या 91/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 17/10/2024 को प्राप्त हुआ था।

[सं. एल. 42012/221/2004-आई.आर. (सी.एम-II)]

मणिकंदन एन, उप निदेशक

New Delhi, the 17th October, 2024

**S.O. 1990.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (**ID. No. 91/2005**) of the **Central Government Industrial Tribunal-cum-Labour Court, Jaipur** as shown in the Annexure, in the industrial dispute between the Management of **Central Sheep & Wood Research Institute** and their workmen, received by the Central Government on **17/10/2024**.

[No. L-42012/221/2004 – IR (CM-II)]

MANIKANDAN. N, Dy. Director

### अनुलग्नक

केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जयपुर

पीठासीन अधिकारी

राधा मोहन चतुर्वेदी

सी.जी.आई.टी. प्रकरण सं.— 91/2005

Reference No. L-42012/221/2004-IR (CM-II)

Dated: 13.08.2015

श्री सत्य नारायण पुत्र श्री सूजा राम, निवासी— ग्राम चान्दसेन, तहसील— मालपुरा, जिला— टोंक, (राजस्थान)  
.....प्रार्थी

### बनाम

1. निदेशक, केन्द्रीय भेड एवं ऊन अनुसंधान, अविका नगर, तहसील—मालपुरा, जिला—टोंक, (राजस्थान)
2. उप निदेशक, केन्द्रीय भेड एवं ऊन अनुसंधान, बीकानेर (राजस्थान)

.....अप्रार्थीगण / विपक्षी

उपस्थित:—

: प्रार्थी की ओर से, कोई उपस्थित नहीं।

: विपक्षीगण की ओर से, कोई उपस्थित नहीं।

: अधिनिर्णय :

दिनांक : 20.05.2024

1. श्रम मंत्रालय भारत सरकार नई दिल्ली द्वारा दिनांक 09.08.2005 को औद्योगिक विवाद अधिनियम 1947 की धारा 10 (1) (डी) व 2। के अन्तर्गत प्रदत्त शक्तियों के अनुसरण में निम्नांकित औद्योगिक विवाद न्यायनिर्णयन हेतु इस अधिकरण को संदर्भित किया गया :—

“Whether the action of the management of Central Sheep & Wool Research Institute in terminating the services of Sh. Satyanarayan S/o Sh. Sujaram from December, 1998 is legal and justified? If not, to what relief the disputant is entitled to and from which date?”

2. दिनांक 20.08.2011 को एक सं” गोधन आदे” I श्रम मंत्रालय द्वारा जारी करते हुये प्रार्थी के पिता के नाम को श्री सुरजाराम के स्थान पर श्री सूजाराम सं” गोधित किया गया।
3. प्रार्थी ने अपने दावे का अभिकथन दिनांक 23.09.2005 को प्रस्तुत किया जिसे दिनांक 25.09.2012 को सं” गोधित किया गया। प्रार्थी का कथन है कि उसकी प्रथम नियुक्ति दैनिक वेतन भोगी कर्मचारी के रूप में वर्ष 1982 में अप्रार्थी संख्या 1 के अधीन हुई। वर्ष 1984 में उसका स्थानांतरण अप्रार्थी संख्या 2 के यहा कर दिया गया। जहाँ उसने नवम्बर, 1988 तक कार्य किया। प्रार्थी ने प्रत्येक कलेण्डर वर्ष में 240 दिन से अधिक कार्य किया। अप्रार्थीगण ने दिसम्बर, 1988 में बिना किसी नोटिस एवं कारण बताये प्रार्थी को सेवामुक्त कर दिया। प्रार्थी की सेवामुक्ति अधिनियम की धारा 25 F, G, व H, एवं नियम 77, 78 के विरुद्ध है। अतः सेवामुक्ति आदे” I को अवैध घोषित करते हुये सेवा में निरंतरता सहित विगत वेतन दिलाते हुये बहाल किया जावे।
4. विपक्षीगण की ओर से वादोत्तर में वाद के तथ्यों को अस्वीकार किया गया। उनका यह कथन है कि आकस्मिक कार्य की उपलब्धता होने पर प्रार्थी को दैनिक वेतन भोगी के रूप में कार्य हेतु रख लिया जाता था। प्रार्थी अपनी इच्छानुसार अनुपस्थित हो जाता था। प्रार्थी ने वर्ष 1982 में 79 दिन, 1983 में 195 दिन, 1984 में 206 दिन, और 1985 में 94 दिन कार्य किया। प्रार्थी स्वयं ही कार्य छोड़ कर अन्यत्र चला गया। वर्ष 1986, 1987 और 1988 में प्रार्थी ने एक भी दिन कार्य नहीं किया। दावा सारहीन है। अतः निरस्त किया जावे।
5. विपक्षी के विरुद्ध एकपक्षीय कार्यवाही का आदे” I पारित होने के उपरांत दिनांक 01.01.2015 को प्रार्थी ने अपना शपथ पत्र मुख्य परीक्षा के रूप में प्रस्तुत किया। विपक्षी के विरुद्ध पारित एकपक्षीय कार्यवाही का आदे” I दिनांक 01.07.2015 को अपास्त कर दिया गया। तदुपरांत विपक्षी का वादोत्तर प्रस्तुत होने के प” चात दिनांक 31.12.2019 को यह प्रकरण पुनः साक्ष्य प्रार्थी हेतु नियत किया गया। दिनांक 22.04.2024 को प्रार्थी के अभिभाषक ने प्रार्थी को उसके शपथ पत्र पर प्रतिपरीक्षा हेतु प्रस्तुत करने में असमर्थता व्यक्त की। इस स्थिति में प्रार्थी की साक्ष्य समाप्त कर दी गई। विपक्षी के अकारण अनुपस्थित रहने के कारण विपक्षी की साक्ष्य का अवसर भी समाप्त कर दिया गया।
6. इस प्रकार यह स्पष्ट है कि प्रार्थी ने यद्यपि अपना मुख्य परीक्षा का शपथ पत्र साक्ष्य में प्रस्तुत तो किया किंतु कई अवसर दिये जाने के प” चात भी स्वयं को प्रतिपरीक्षा हेतु प्रस्तुत नहीं किया। इसलिए प्रतिपरीक्षा के अभाव में प्रार्थी के कथन साक्ष्य में ग्रहण किये जाने योग्य नहीं है।
7. प्रार्थी की साक्ष्य के अभाव में प्रार्थी यह प्रमाणित नहीं कर सका है कि उसने सेवा समाप्ति तिथि के पूर्ववर्ती एक कलेण्डर वर्ष में 240 दिन से अधिक विपक्षी के अधीन कार्य किया है, और प्रार्थी की सेवा समाप्ति अधिनियम के प्रावधानों के विरुद्ध है। इस प्रकार प्रार्थी, साक्ष्य के अभाव में कोई अनुतोष प्राप्त करने का अधिकारी नहीं है।
8. श्रम मंत्रालय भारत सरकार द्वारा संदर्भित विवाद को इसी प्रकार न्याय निर्णीत किया जाता है।
9. अधिनिर्णय की प्रतिलिपि समुचित सरकार को अधिनियम, की धारा 17 (1) के अंतर्गत प्रका” I नार्थ प्रेषित की जावें।

राधा मोहन चतुर्वेदी, पीठासीन अधिकारी

नई दिल्ली, 17 अक्तूबर, 2024

का.आ. 1991.—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मालिक, मैसर्स आनंदमयी इंजीनियर्स, मुलगाडा, विशाखापत्तनम, आंध्र प्रदेश, के प्रबंधन के संबद्ध नियोजकों और श्री जितेन्द्र कुमार जेना, कामगार, के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह-श्रम न्यायालय- हैदराबाद पंचाट(संदर्भ संख्या 5/2024) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 17.10.2024 को प्राप्त हुआ था।

[सं. एल - 42025-07-2024-184-आईआर (डीयू)]

दिलीप कुमार, अवर सचिव

New Delhi, the 17th October, 2024



**S.O. 1991.**—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. ID. No. 5/2024) of the **Central Government Industrial Tribunal cum Labour Court– Hyderabad** as shown in the Annexure, in the Industrial dispute between the employers in relation to **The Proprietor, M/s Anandamovee Engineers, Mulagada, Visakhapatnam, Andra Pradesh, and Shri Jitendra Kumar Jena, Worker**, which was received along with soft copy of the award by the Central Government on 17.10.2024.

[No. L-42025-07-2024-184-IR (DU)]

DILIP KUMAR, Under Secy.

**ANNEXURE**

**IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT AT  
HYDERABAD**

Present: - **Sri IRFAN QAMAR**

Presiding Officer

Dated the 28<sup>th</sup> day of August, 2024

**INDUSTRIAL DISPUTE No. 5/2024**

Between:

Sri Jitendra Kumar Jena,  
D.No.60-17-18, Prakash Nagar,  
Malkapuram Viskhapatnam,  
Andra Pradesh-530011.

**.....Petitioner**

AND

The Proprietor,  
M/s Anandamovee Engineers,  
Flat No.G-4, B.G.M Patruddu Residency,  
Near Likitha Theatre, Mulagada,  
Viskhapatnam, Andra Pradesh-530011.

**...Respondents**

Appearances:

For the Petitioner : None

For the Respondent : None

**A W A R D**

The Government of India, Ministry of Labour by its order No. 8/2/2024-B1 dated 18.01.2024 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal between the management of M/s Anandamovee Engineers and their workmen. The reference is,

**SCHEDULE**

“Whether the action of the management of M/s Anandamoyee Engineers, Visakhapatnam in terminating the services of Sri Jitendra Kumar Jena and not paying the terminal benefits at a rate of Rs. 695/- is legal and justified? If not, what relief the workman is entitled to?”

The reference is numbered in this Tribunal as I.D. No 5/2024 and notices were issued to the parties concerned.

2. Petitioner absent. Record shows that, on previous date, notice issued to petitioner served but petitioner is absent. Petitioner is not present today also and did not filed any claim statement. It seems that petitioner is not interested in pursuing his case. In absence of Claim Statement and absence of petitioner, a ‘No-Claim’ award is passed.

Award is passed accordingly. Transmit.

Typed to my dictation by Shri Vinay Panghal, LDC corrected and signed by me on this the 28<sup>th</sup> day of August, 2024.

IRFAN QAMAR, Presiding Officer

Appendix of evidence

Witnesses examined for the  
Petitioner  
NIL

Witnesses examined for the  
Respondent  
NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 17 अक्टूबर, 2024

का.आ. 1992.—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार श्रेष्ठ डिटेक्टिव सिक्योरिटी प्रा. लिमिटेड, आसनसोल, के प्रबंधन के संबद्ध नियोजकों, और श्री पर्वत मंडल, कामगार, के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह-श्रम न्यायालय-आसनसोल पंचाट(संदर्भ संख्या 28/2023) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 17.10.2024 को प्राप्त हुआ था।

[सं. एल - 42025-07-2024-182-आईआर (डीयू)]

दिलीप कुमार, अवर सचिव

New Delhi, the 17th October, 2024

**S.O. 1992.**—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. ID. No. 28/2023) of the **Central Government Industrial Tribunal cum Labour Court— Asansol** as shown in the Annexure, in the Industrial dispute between the employers in relation to **Shresth Detective Security Pvt. Ltd, Asansol, and Shri Pravat Mondal, Worker**, which was received along with soft copy of the award by the Central Government on 17.10.2024.

[No. L-42025-07-2024-182-IR (DU)]

DILIP KUMAR, Under Secy.

ANNEXURE

**BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL -CUM- LABOUR COURT,  
ASANSOL.**

**PRESENT:** Shri Ananda Kumar Mukherjee,  
Presiding Officer,  
C.G.I.T-cum-L.C., Asansol.

**REFERENCE CASE NO. 28 OF 2023**

**PARTIES:** Pravat Mondal  
Vs.

Management of M/s. Shresth Detective Security Pvt. Ltd.

# REPRESENTATIVES:

For the Union/Workman: None.

For the Management: None.

**INDUSTRY:** Security Service

**STATE:** West Bengal.

**Dated:** 25.09.2024.

## A W A R D

In exercise of powers vested under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Ministry of Labour, Government of India through the Office of the Deputy Chief Labour Commissioner (Central), Asansol, vide its Order No. 1(07)/2023/E dated 13.04.2023 has been pleased to refer the following dispute between the employer, that is the Management of M/s. Shresth Detective Security Private Limited and their workman for adjudication by this Tribunal.

## S C H E D U L E

*“ Whether the action of the management of M/s. Shresth Detective Security Pvt Ltd. under Bank of India, Benachity Branch, in terminating service of Sri Pravat Mondal, Ex.Security Guard is justified? If not, what relief the workman is entitled to? ”*

1. On receiving Order No. 1(07)/2023/E dated 13.04.2023 from the Office of the Deputy Chief Labour Commissioner (Central), Asansol, Ministry of Labour, Government of India, for adjudication of the dispute **Reference case No. 28 of 2023** was registered on 15.05.2023 and an order was passed for issuing notice to the parties through registered post, directing them to appear and submit their written statements along with relevant documents in support of their claims and a list of witnesses. Subsequently, a corrigendum was received through order dated 21.09.2023 with detailed address of the workman and the contractor firm.

2. The case is fixed up today for filing written statement by parties as special chance. Pravat Mondal, aggrieved workman is not found available on repeated calls at 12.20 pm. None appeared for Bank of India and M/s. Shresth Detective Security Private Limited.

3. On a perusal of record, I find that this case was registered on 15.05.2023 and dates have been fixed on 03.07.2023, 29.08.2023, 20.09.2023, 02.02.2024, 26.03.2024, 12.08.2024 and 25.09.2024 for appearance and filing written statement by parties but none of the parties appeared.

4. Several Opportunities were given to parties to represent their case by appearing before the Tribunal. Notices were issued on three occasions but none of the parties participated in the proceeding. Under such circumstances it appears to me that aggrieved party is not inclined to proceed further and accordingly the Industrial Dispute referred in Schedule is disposed of for non-prosecution. Let a No Dispute Award be drawn up.

Hence,

## O R D E R E D

that a No Dispute Award be drawn up in respect of the above Reference case. Let copies of the Award in duplicate be sent to the Ministry of Labour and Employment, Government of India, New Delhi for information and Notification.

ANANDA KUMAR MUKHERJEE, Presiding Officer,

नई दिल्ली, 18 अक्टूबर, 2024

**का.आ. 1993.**—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार अध्यक्ष सब एरिया कैंटीन सेल स्टेशन मुख्यालय के 61 सब एरिया चिंकारा कैंटीन संगठन मुख्यालय 61 पास जयपुर चिंकारा मार्ग मिलिट्री स्टेशन जयपुर राजस्थान के प्रबंधतंत्र, संबद्ध नियोजको और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चंडीगढ़-II के पंचाट (97/2018) प्रकाशित करती है।

[सं. एल - 12025/01/2024- आई आर (बी-I)-227]

सलोनी, उप निदेशक

New Delhi, the 18th October, 2024

**S.O. 1993.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 97/2018) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Chandigarh-II* as shown in the Annexure, in the industrial dispute between the management of The Chairman 61 Sub Area Chinkara Canteen Organization Headquarters 61 Sub Area Canteen Cell Near Station Headquarters Jaipur Chinkara marg Military Station Jaipur Rajasthan and their workmen.

[No. L-12025/01/2024- IR (B-I)-227]

SALONI, Dy. Director

#### ANNEXURE

#### CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH.

**Present: Sh. Kamal Kant, Presiding Officer, Chandigarh.**

ID No. 97/2018

Registered on:-08.01.2019

Ex. Subedar (Clerk) Jarnail Singh, aged 59 years S/o Sardar Bhal Singh, H.No.3285/5, Shyam Colony, Jhansa Road, Kurukshetra-136118 (Haryana). Mobile No. 9416365275.

.....Workman

#### Versus

1. The Chairman, 61 Sub Area Chinkara Canteen Organization, Headquarters 61 Sub Area, Canteen Cell, Near Station Headquarters, Jaipur, Chinkara Marg, Military Station, Jaipur (Rajasthan)-302012
2. The Patron, 61 Sub Area Chinkara Canteen Organization, Headquarters 61 Sub Area, Canteen Cell, Near Station Headquarters, Jaipur, Chinkara Marg, Military Station, Jaipur, (Rajasthan)-302012
3. The Manager, 61 Sub Area Chinkara Canteen (Now known as Ex-Servicemen Canteen), Dev Colony, Rohtak-124001 (Haryana).

.....Managements

#### AWARD

**Passed On:-30.08.2024**

1. The workman Jarnail Singh has directly filed statement of claim under section 2-A of the Industrial Disputes Act, 1947 (hereinafter called the Act), with a prayer to reinstate the workman with back wages.
2. During the pendency of the proceedings before this Tribunal the case was fixed for remaining evidence of workman.
3. Since the Ld. Counsel of workman has withdrawn the present case, therefore there is no need to proceed the case further. Hence the present case is dismissed as withdrawn. File after completion be consigned in the record room.
4. Let copy of this award be sent to Central Government for publication as required under Section 17 of the ID Act, 1947.

KAMAL KANT, Presiding Officer

नई दिल्ली, 18 अक्टूबर, 2024

**का.आ. 1994.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारतीय खाद्य निगम के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक न्यायाधिकरण, पटना के पंचाट (सन्दर्भ केस नंबर 08 © का 2024) को प्रकाशित करती है, जो केन्द्रीय सरकार को 17/10/2024 को प्राप्त हुआ था।

[ सं. एल-20013/01/2024-आई.आर. (सी.एम.-I)]

मणिकंदन.एन, उप निदेशक

New Delhi, the 18th October, 2024

**S.O. 1994.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award ( **Reference.Case.No. 08 © of 2024**) of the **Industrial Tribunal, PATNA** as shown in the Annexure, in the industrial dispute between the Management of **Food Corporation of India** and their workmen, received by the Central Government on **17/10/2024**

[No. L-20013/01/2024– IR (CM-I)]

MANIKANDAN. N, Dy Director

#### ANNEXURE

#### BEFORE THE PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, PATNA.

#### Reference Case No.:- 08 (C) of 2024

Between the management of (1) The General Manager ( Region) Food Corporation of India, Regional Office, Arunachal Building, Exhibition Road, Patna-800001 (2) The Divisional Manager, Food Corporation of India, Divisional Office, 2<sup>nd</sup>& 3<sup>rd</sup> floor Krishna Complex, B.B. Ganj, Muzaffarpur-842001 (Bihar ) And The President, Food Corporation of India Shramik Union, C-45, Chandu Nagar, Gali No. % near Bihar Masjid, Karawal Nagar Road, Delhi-110094.

For the management:- Sri Saket Tiwary, Advocate.  
Sri Animesh Gupta, Advocate.

For the Union:- None.

Present:- **Manoj Shankar**  
**Presiding Officer,**  
**Industrial Tribunal, Patna.**

#### A W A R D

**Patna, dt- 22nd August, 2024.**

By the adjudication order no.- 1/ID(4)/2024/Dy CLC-Pt dated- 22/27.03.2024 the Govt. of India, Ministry of Labour & Employment, Office of the Dy. Chief Labour Commissioner ( Central ), Maurya Lok Complex, A Block, 2<sup>nd</sup> Floor, Room No.-6,16,& 17, Patna-800001 has referred under sub-section-(5) of Section-12 read with Sub-section-2(A) of section-10 of the Industrial Dispute Act, 1947, ( hereinafter to be referred to as “the Act”), the following dispute between (1) The General Manager ( Region) Food Corporation of India, Regional Office, Arunachal Building, Exhibition Road, Patna-800001 (2) The Divisional Manager, Food Corporation of India, Divisional Office, 2<sup>nd</sup>& 3<sup>rd</sup> floor Krishna Complex, B.B. Ganj, Muzaffarpur-842001 (Bihar ) And The President, Food Corporation of India Shramik Union, C-45, Chandu Nagar, Gali No. % near Bihar Masjid, Karawal Nagar Road, Delhi-110094 for adjudication to this tribunal:-

#### SCHEDULE

“ Whether the dispute raised by the union over the apprehension of malafide and Arbitrary transfer of all the No Work No Pay system workers employed at FCI FSD Punoura to FCI FSD Chanpatia by the management of Food Corporation of India is legal, fair and justified? If yes, then for what relief these No Work No Pay System Workers is entitled to?”

2. This reference case is received to this tribunal on 28.03.2024 in which dispute of the workman side is raised by the President, Food Corporation of India Shramik Union, C-45, Chandu Nagar, Gali No. % near Bihar Masjid, Karawal Nagar Road, Delhi-110094 and the management side is General Manager, ( Region) Food Corporation of India, Regional Office, Patna and Divisional Manager, Food Corporation of India, Divisional Office, Muzaffarpur. This tribunal finds that notice was issued to both the sides on 01.04.2024 fixing date 08.05.2024 but non of the parties turned up but on the same day at about 12.50 P.M a vakalatnama on behalf of the management side is filed. When workmen side did not turned up. A fresh registered notice was sent to the representative of the workmen / union on 10.05.2024 fixing date 11.07.2024. In spite of issuance of registered notice workmen / union side did not turned up however, management side appeared and filed a petition annexing the copy of the workmen side but no one turned up on behalf of the workmen / union. Office was directed to place the status of the registered notice issued to the representative of workmen / union. Record shows that on the next fixed date 08.08.2024, workmen / union side was absent and it was reported from the office the registered notice issued to the President Food Corporation of India

Shramik Union, is also not returned back that itself shows that workmen / union side is well aware about the notice of this tribunal and proceeding of the case, even then workmen side did not turned up but yet this tribunal has given one more opportunity to the workmen side to place its claim fixing on 19.08.2024 but again workmen / union side is absent however, the learned counsel of the management side filed its pairvi and prayed perhaps workmen side has no grievance for the issue raised before the ALC (C), Patna that's why they did not turned up inspite of receiving notice of this tribunal, so necessary order may kindly be passed.

From perusal of the entire case record and taking into submission of the management side, it appears that workmen side was well aware of the proceeding as notice is already received by the workmen side but did not turned up. Continuous absence of the workmen side itself denotes that perhaps workmen side has no grievance at all for the issue regarding apprehension of malafide and arbitrary transfer as raised before the ALC (C), that's why they did not turned up so at this juncture this tribunal has no option than to pass no dispute award. So "No Dispute Award" is passed in this case. This award is effected after date of publication in gazette.

This is my award accordingly.

Dictated & Corrected by me.

22.08.2024

MANOJ SHANKAR, Presiding Officer

नई दिल्ली, 21 अक्टूबर, 2024

**का.आ. 1995.**—औद्योगिक विवाद अधिनियम 1947 (1947 का 14 ) की धारा 17 के अनुसरण में केन्द्रीय सरकार एचडीएफसी बैंक के प्रबंधतंत्र, संबद्ध नियोजको और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय कोलकता के पंचाट (41/2015) प्रकाशित करती है।

[सं. एल-12011/37/2015-आई.आर. (बी-1)]

सलोनी, उप निदेशक

New Delhi, the 21st October, 2024

**S.O. 1995.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 41/2015) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Kolkata* as shown in the Annexure, in the industrial dispute between the management of HDFC Bank and their workmen.

[No. L-12011/37/2015- IR (B-I)]

SALONI, Dy. Director

#### ANNEXURE

#### CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Present : Justice K. D. Bhutia, Presiding Officer.

**REF. NO.41 OF 2015**

**Parties :** Employers in relation to the management of

1. **HDFC Bank, 3A, Gurusaday Road, Kolkata-700 019,**
2. **M/s. S & IB Services Pvt. Ltd.**
3. **M/s. PVS Pvt. Ltd.**
4. **JRM Management & Consultancy Services,**
5. **M/s. IB Security & Maintenance Service,**
6. **M/s. Pathak Enterprise and**
7. **DCM Vigilance & Maintenance Service Ltd.**

**Versus**

**Bank Employees Federation, West Bengal, 53, Radhabazar Lane, Kolkata – 700 001.**

Appearance:

On behalf of HDFC Bank: Absent.

On behalf of M/s. S & IB Services Pvt. Ltd.: Authorised Representative

On behalf of M/s. PVS Pvt. Ltd.: Absent.

On behalf of JRM Management & Consultancy Services: Absent.

On behalf of M/s. IB Security & Maintenance Service: Absent.

On behalf of M/s. Pathak Enterprise: Absent.

On behalf of DCM Vigilance & Maintenance Service Ltd.: Absent.

On behalf of the Union: Authorised Representative.

**Dated: 20<sup>th</sup> August, 2024**

### **A W A R D**

By order No. L-12011/37/2015-IR (B-I) dated 03-07-2015, the Govt. of India, Ministry of Labour in exercise of power conferred under section 10(1) (d) and sub-section (2A) of the Industrial Dispute Act, 1947 has referred the following issues for determination:-

“Whether the action of M/s. S&IB Services Pvt. Ltd., M/s. DCM Vigilance & Maintenance Services Pvt. Ltd., M/s. IB Security & Maintenance Services, M/s. JRM Management & Consultancy Services, M/s. PVS Pvt. Ltd. and M/s. Pathak Enterprise, contractor of HDFC Bank Ltd. is justified in denying the (i) Gun Allowance, (ii) Special Allowance & (iii) Conveyance Allowance to the contractual workmen is legal and /or justified? If not, what relief the workmen are entitled to?”

It is the case of the Bank Employees Federation, West Bengal that HDFC Bank Ltd. has engaged different service providers named above for supply of men power in different category such as Security Guard, Gunman Security Guards for its various branches and ATMs, Peon, Housekeeper etc. That they were paid allowances by the contractor in the form of Conveyance Allowance, Special Allowance and Gun Allowance as per their nature of jobs and which form parts of their wages. Such allowances were paid to them from the month of April, 2006 till September, 2011. That without any notice and information payment of such allowances was suddenly stopped by the contractor employers w.e.f. October, 2011.

On such sudden discontinuation the union placed the demands for payment of such allowances before the contractor employers as well as before the principal employer but they did not pay any heed. Thus, finding no other alternative the union raised a dispute before Labour Commissioner (Central), Kolkata. Unfortunately, the conciliation proceeding ended in a failure. Hence, the present reference.

Thus, the union have alleged denial of payment of legitimate and statutory allowances which are inseparable part of their wages by their employers to be illegal, arbitrary and unjustified and in violation of section 21(1) of Contract Labour (Regulation & Abolition) Act, 1970. Thus, they have prayed that the contractor employers and principal employers be directed to pay the Gun Allowance, Conveyance Allowance and Special Allowance to all the contractors' employees engaged by HDFC Bank Ltd.

Record shows the case has been contested only by HDFC Bank Ltd. and M/s. S & IB Services Ltd. by filing two separate written statements. The contractor employees namely M/s. IB Security & Maintenance Services, M/s. DCM Vigilance & Maintenance Services Pvt. Ltd. and M/s. JRM Management & Consultancy Services had put appearance but ultimately they failed to pursue the dispute and as such they have been proceeded exparte. That contractor employers named M/s. PVS Pvt. Ltd. and M/s. Pathak Enterprise have failed to put appearance and contest the same. Accordingly, they too have been proceeded exparte.

HDFC Bank Ltd. in its written statement have alleged that it not being the employer of those contractor employees the present case is not maintainable against it as there exists no relationship of employer and employees between it and those contractor employees. It has also alleged that Tribunal has no jurisdiction as the appropriate Government to refer the present dispute between the contractor employer and its employees is the State Govt. in view of order passed by Hon'ble High Court, Calcutta in W.P. No.9628(W) of 2018, where it has been held that the appropriate government in relation to contractors against whom the dispute is raised by their workmen is State Govt. That aggrieved workmen must approach State Govt. for redressal. Therefore it has prayed for rejection of the order of reference.

M/s. S&IB Services Pvt. Ltd. the only contesting contractor employer in its written statement has alleged that the union which has raised the dispute has no locus standi or representative character to espouse the cause of the

concerned employees. That the Central Govt. is not the appropriate Govt. to refer the dispute relating to contractor employees.

Further, it has alleged that a contract was awarded to M/s. S&IB Services Pvt. Ltd., by HDFC Bank Ltd. for specific period and for specific purpose. The contract is not related in respect of perennial nature of job. That M/s. S&IB Services Pvt. Ltd. has been engaged by HDFC Bank Ltd. for providing security guards. That the payment of allowances to the security guards are made within the scope and ambit of the contract executed between bank and it. That the allowance as alleged by the union are not inseparable part of wages. The mode of payment of conveyance allowance and other allowances are matters of record and which are not statutory entitlement.

The security guards are not entitled to demand of allowance which is not sponsored by HDFC Bank. The payments are made to the employees as per the terms and conditions of the contract. That the contractor employer has no financial capacity to meet up the demand as raised by the union. The rates are revised from time to time. Thus, it has prayed for dismissal of the reference.

The union in its rejoinders has categorically denied the contentions of principal employer and the contractor M/s. S&IB Services Pvt. Ltd. that State Govt. is the appropriate Govt. to refer the dispute before State Industrial Tribunal or that it has no locus standi to espouse the cause of contractor employees.

The union to prove its claim and case has examined Sri Supriya Chatterjee, one of the concerned workmen as W.W.1 and through him it has proved and exhibited following documents:-

1. Pay Slip of Sri Tarun Kanti Biswas, a CCE for the month of August, 2011 issued by S & IB Services Pvt. Ltd. as Exbhit-W-1.
2. Pay Slip of Sri Tarun Kanti Biswas, a Facility Attendant for the month of September, 2015 issued by S & IB Services Pvt. Ltd. as Exbhit-W-1/A.
3. Copy of union's letter dt.14-02-2013 addressed to ALC (C ), Kolkata as Exb.W-2.
4. Copy of conciliation failure report dt. 12-05-2015 of ALC (C ), Kolkata to the Ministry of Labour & Employment, New Delhi as Exb.W-3.

On the other hand the bank has failed to adduce any evidence either oral or documentary.

The only contesting contractor employer S & IB Services Ltd. has examined Sri Sagar Bhattacharyya, its Manager- Operation as M.W.1 and through him it has proved and exhibited following documents:-

1. Copy of Register of Wages of its employees deployed in the establishment of principal employer HDFC Bank Ltd., Sarat Bose Road Branch and Barrackpore Branch for the month of March, 2012, April, 2013, April, 2014, April, 2015 and April, 2016 and which have been marked as Exb. M-1, M-1/A, M-1/B, M-1/C and M-1/D.

In view of the order of reference only issue that is required to be decided by this Tribunal is whether the contractor employees of HDFC Bank were paid Gun Allowance, Special Allowance and Conveyance Allowance till September, 2011 and suddenly without any notice and information the employers have arbitrarily stopped the payment of such allowances.

However, the contesting employers have raised an issue regarding jurisdiction of this Tribunal and alleged that the dispute is between the contractor employer and its employees and as such in view of order passed by the Hon'ble High Court in W.P. No. W.P. No. 9628(W) of 2018 the State Govt. is the appropriate authority and not the Central Govt.

So, before considering the main issue under reference let me find out who is the Appropriate Govt. who can make reference of a dispute where one of the stake holder is HDFC Bank, the principal employer. Further, the dispute revolves around sudden stoppage of payment of allowances from October 2011 by the contractor employer to its employees. Then question arises whether the decision to stop payment of disputed allowances was unilateral decisions of the Contractors or it was stopped by the order of the Principal employer as the contractor employer cannot make payment to its employees of those allowance unless they are paid or reimbursed of such allowances by the principal employer for whose establishment those workmen work or render their physical service.

In view of section 2 (a) (i) of the I.D. Act the appropriate Govt. in respect of a banking company is the Central Govt. and not State Govt. as in the present case the dispute is not only in between the contractor and its employees as the monetary demand raised by the employees can be settled and can be paid only by the principal employer and not by the contractor from their pocket. Further, such payment depends on the terms and conditions of contract entered between the principal employer and the contractor employer.



Therefore, in view of above, this Tribunal holds that the Central Govt. is the appropriate Govt. to refer the dispute in question and not State Govt. and thereby the present case is maintainable before this Central Industrial Tribunal.

It is very interesting to note both the principal employers and contractor employer who are contesting the present dispute for reason best known to them have withheld the contract/ agreement that were executed between them and also in between principal employer and those other contractor employers who have been proceeded ex parte to prove the terms and conditions of contract and nature of agreed payment by the principal employer and also to prove that the principal employer has with certain cogent and satisfactory reasons has stopped payment of disputed allowances w.e.f. October, 2011.

Exb. W-1 and W-1/A shows that S & IB Service Ltd. had deployed one Sri Tarun Kanti Biswas to work at HDFC Bank's Salt Lake Branch situated at BD-46 as CCE and Facility Attendant and he was paid special allowance of Rs.150/-, washing allowance of Rs.75/- for working as CCA in the month of August, 2011. The same person has been shown as Facility Attendant in the pay slip of September, 2015 and which shows that he was not paid any special allowance and washing allowance which were paid to him in August, 2011. So, prima facie it is seen the same person was paid special allowance and washing allowance in the month of August, 2011 and showing the same person as a Facility Attendant he has been deprived of special allowance and washing allowance.

Further, M.W.1 in his evidence has admitted that the contractor employer paid all the allowances as demanded by the Security Guards upto March, 2016. That after payment of Minimum Rate Wage, fixed by the Govt. of West Bengal to its employees as per the order of the Hon'ble High Court, Calcutta, stopped making payment of those allowances as the gross salary of those security guards were more than State Minimum Wage and there was no decrease in the total emolument. That even after change in the allowance components after March, 2016 the salary of guards were more than they had drawn in the month of March, 2016. He has further stated the minimum rate fixed by Govt. of West Bengal does not speak about payment of gun allowance and special allowance.

It is the case of the union that conveyance allowance, gun allowance and special allowance were integral part of their wages under Payment of Wages Act and which cannot be withdrawn by the employer unilaterally.

The term 'wages' has been defined in section 2 (vi) of the Payment of Wages Act, 1936 as follows:-

"wages" means all remuneration (whether by way of salary, allowances or otherwise) expressed in terms of money or capable of being so expressed which would, if the terms of employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment, and includes-

- (a) any remuneration payable under any award or settlement between the parties or order of a Court;
- (b) any remuneration to which the person employed is entitled in respect of overtime work or holidays or any leave period;
- (c) any additional remuneration payable under the terms of employment (whether called a bonus or by any other name);
- (d) any sum which by reason of the termination of employment of the person employed is payable under any law, contract or instrument which provides for the payment of such sum, whether with or without deductions but does not provide for the time within which the payment is to be made;
- (e) any sum to which the person employed is entitled under any scheme framed under any law for the time being in force;

but does not include—

- (1) any bonus (whether under a scheme of profit sharing or otherwise) which does not form part of the remuneration payable under the terms of employment or which is not payable under any award or settlement between the parties or order of a Court;
  - (2) the value of any house-accommodation, or of the supply of light, water, medical attendance or other amenity or of any service excluded from the computation of wages by a general or special order of [the appropriate Government];
  - (3) any contribution paid by the employer to any pension or provident fund, and the interest which may have accrued thereon;
  - (4) any travelling allowance or the value of any travelling concession;
  - (5) any sum paid to the employed person to defray special expenses entailed on him by the nature of his employment;
- or

(6) any gratuity payable on the termination of employment in cases other than those specified in sub-clause (d)]

Therefore, on plain reading of the definition of wages as provided in the Act of 1936, it appears the wages does not include travelling allowances or the value of any travelling concession. Therefore, this Tribunal is of view that conveyance allowance does not form an integral part of wages. That apart nothing has come to prove that gun allowance and special allowance too form part of basic wages.

But M.W.1 in his evidence has admitted that contractor employer S & IB had withdrawn conveyance allowance, gun allowance and special allowance from the month of March 2016 onwards without prior notice to the workmen concerned or to their union as it started making payment under Minimum Wages Act. That in view of provisions of section 9-A of the Industrial Disputes Act, no employer who proposed to effect any change in the condition of service applicable to any workman in respect of any matter specified in fourth schedule has to give 21 days' notice to the workmen or to the union. In the present case it is seen all the contractor employers of HDFC Bank including M/s. S & IB Security Pvt. Ltd. has failed to give notice u/s 9-A to their concerned employees or to their union. Therefore, unilateral decision to stop payment of conveyance allowance, gun allowance and special allowance from the month of October, 2011 or from March 2016 onwards, otherwise paid to the security guards and other contractor employees till the month of September, 2011 or till February 2016 by S & IB Security Guards and other contractors of HDFC Bank without prior notice is held to be illegal. Moreover, the contractor employers have failed to produce the copy of agreements or contract it had with HDFC Bank Ltd. regarding supply of security guards to show that due to sudden withdrawal of payment by the principal employer they were unable to make payment of those allowances to their employees.

However, in view of the provision of section 9-A of the I.D. Act the principal employer and contractor employers are bound to give prior notice in respect of any change in condition of service which includes allowances also, when the contractor employers have failed to produce any settlement it had with the workmen or their union for withdrawal of such allowances. The employers cannot wriggle out of the provisions of section 9-A of the I.D. Act, 1947.

Further, nothing has come on record to show that payment of such allowances was stopped by M/s. S & IB Services Pvt. Ltd. and other contractor employees on the basis of settlement they had with the workmen concerned or the union of its workmen or after serving 21 days' notice to the concerned workmen or to the concerned union as required u/s 9-A of the I.D. Act as stoppage of allowances also amounts to change in condition of service or at the direction of the Principal Employer.

Therefore, the contractor employers are bound to pay conveyance allowance, gun allowance and special allowance, though which do not form part of wages but were earlier paid to those security personnel and other employees deployed by them in the establishment of principal employer HDFC Bank Ltd. from the date they have stopped payment unilaterally or at the direction of the principal employer till those security personnel or other employees worked for them in the establishment of the Principal Employer and can claim reimbursement of the same from the Principal employer.

In case those contractors fail to pay such due to those security guards and other employees deployed by them in the establishment of HDFC Bank Ltd., then in view of provisions of section 21 (4) of Contract Labour (Regulation & Abolition) Act, 1970 the principal employer who is the ultimate user of the service of those security guards are bound to pay the arrears due to those security guards employed by it through different contractors after verification of their service in its establishment and also after verifying their wage slips of September, 2011 onwards till it took their services and recover the same from its contractors from the pending bills, if any, provided it had already paid those allowances to the contractors. In case if it had not paid toward such allowances to its contractors then it is bound to make payment of arrear of conveyance allowance, gun allowance and special allowance to all the security personnel and other contractor employees engaged by it through the above mentioned contractors for the period of contract it had with them or till the period those security personnel and other contractor employees rendered their services to its establishment.

Accordingly, Reference no.41 of 2015 is allowed with the finding that unilateral decision of the contractor employers as well as principal employer HDFC Bank without complying with the mandatory provisions of section 9-A of I.D. Act, in effecting changes in the service conditions of contractor employees by stopping payment of conveyance allowance, gun allowance and special allowance is held to be illegal and they are bound to pay the dues of those workmen from the date, the payment was stopped till their service in the establishment of the HDFC Bank.

Both the principal employer and contractor employers are directed to make payment of the above due within three months from the date of the award, failing which the union or concerned workman shall be at liberty to recover the same according to law.

Justice K. D. BHUTIA, Presiding Officer

नई दिल्ली, 21 अक्टूबर, 2024

**का.आ. 1996.**—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार आई डी बी आई बैंक के प्रबंधतंत्र, संबद्ध नियोजको और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय कोलकता के पंचाट (13/2018) प्रकाशित करती है।

[सं. एल-12011/06/2018-आई.आर. (बी-1)]

सलोनी, उप निदेशक

New Delhi, the 21st October, 2024

**S.O. 1996.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.13/2018) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Kolkata* as shown in the Annexure, in the industrial dispute between the management of IDBI Bank and their workmen.

[No. L-12011/06/2018- IR (B-I)]

SALONI, Dy. Director

#### ANNEXURE

#### CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

**Present : Justice K. D. Bhutia, Presiding Officer.**

**REF. NO. 13 OF 2018**

**Parties :** Employers in relation to the management of

1. **The Managing Director, IDBI Bank Limited,**
2. **Premier Vigilance & Security Pvt. Ltd.,**
3. **M/s. DCM Vigilance & Maintenance Service Pvt. Ltd.,**
4. **M/s. ID Security & Maintenance Services,**
5. **International Security Organisation (ISO),**
6. **S & IB Security Service**
7. **Jaguar Securities,**

**Versus**

**All India IDBI Bank Contract Employees Federation.**

#### Appearance:

On behalf of The Managing Director, IDBI Bank Limited : Absent.

On behalf of Premier Vigilance & Security Pvt. Ltd. : Absent.

On behalf of M/s. DCM Vigilance & Maintenance Service Pvt. Ltd. : Absent.

On behalf of M/s. ID Security & Maintenance Services: Absent.

On behalf of International Security Organisation (ISO) : Absent.

On behalf of Jaguar Securities: Absent.

On behalf of S & IB Security Service: Mr Tapan Kumar Chakraborty, Authorised Representative.

On behalf of the Union, All India IDBI Bank Contract Employees Federation: Mr. Anup Adhikari, the Secretary of the Union.

**Dated: 19th September, 2024**

#### A W A R D

By order No. L-12011/06/2018 –IR(B-I) dated 26-09-2018, the Central Government, Ministry of Labour in exercise of power conferred u/s 10 (1) (d) and sub-section (2A) of Industrial Dispute Act, 1947 has referred the following disputes to this Tribunal for adjudication:-

“1) Whether there has been a violation of Sec.33 of ID Act, 1947 by the management of IDBI Bank and their contactors namely i) DCM Vigilance & Maintenance Service Pvt. Ltd., ii) Premier Vigilance & Security Pvt. Ltd.,

iii) M/s. IB Security & Maintenance Services, iv) Eastern Region Jaguar Securities, v) International Security Organisation (ISO), vi) S & IB Security Service in effecting retrenchment of outsourced workmen engaged by the bank during the pendency of conciliation proceedings? If yes, to what relief the retrenched workmen employees are entitled for?

2. Whether the action of the management of IDBI Bank and their contractors to effect retrenchment w.e.f. 01-06-2017 of outsourced employees working in various branches of the bank in the state of West Bengal is in contravention of statutory requirements contemplated under Section 25 F, 25 G of Industrial Disputes Act, 1947? If yes, whether the retrenched workmen are entitled for reinstatement?"

The case of the union in gist is that IDBI Bank Ltd., a Govt. of India owned Public Sector Bank had outsourced the job of Gunman, Security Guards, Sweeper, Pantry, Peon, Cash Peon, Cash Sorter, Photocopier Operator, Duftry, Scanning of Cheques, Inwarding of Cheques, Messenger duties, Filing of documents, Despatch work, operator of Diesel Generator Sets which are perennial in nature and incidental to the work through different contractors namely i) DCM Vigilance & Maintenance Service Pvt. Ltd., ii) Premier Vigilance & Security Pvt. Ltd., iii) M/s. IB Security & Maintenance Services, iv) Jaguar Securities, v) International Security Organisation (ISO), vi) S & IB Security Service.

The bank had taken a decision to reduce the outsourced men power w.e.f. 1<sup>st</sup> June, 2017. Consequently, the contractors retrenched huge number of their employees of different categories deployed in different branches of IDBI Bank Ltd. during the pendency of the conciliation proceeding before the Labour Commissioner (C), Kolkata in violation of the provision of section 33 of the I.D. Act and without following the procedure laid down u/s 25-F and 25-G of the ID Act, 1947.

Further, the union has alleged that the contractors' employers have retrenched those workmen as per the instructions of the principal employer. The retrenchment of the outsourced workmen effected at the instances of the IDBI Bank Ltd. is illegal and not justified. Therefore, they have prayed for setting aside and quashing the retrenchment of outsourced workmen and to reinstate them with full back wages and for other relief.

The record shows the case has been contested by IDBI Bank Ltd. by filing written statement wherein it has categorically alleged the present reference is not maintainable against it as there exists no direct relationship of employer and employees between it and those contractor employees engaged by its contractors. That the union which has espoused the dispute has no *locustandi* to raise the dispute. That the dispute being between contractors and their employees and as such this Tribunal has no jurisdiction to entertain the present dispute.

Further, it has alleged that the Bank availed different services such as security services, facility management services, upkeep of premises and other incidental services from service providers based on outsourcing policy of the RBI. The bank had floated tender for outsourced job and accepted the lowest bid and thereby engaged those contractors for fixed short tenures as per the terms and conditions contained in the contract/agreement. That the contract/ agreement executed between it and its service providers do not contain any clause of acceptance of relationship of employer and employees between it and the employees of its contractors or service providers.

That the agreement executed between the bank and its service providers named above clearly provides that it is the sole responsibilities of the contractors to discharge their statutory responsibilities towards the employees engaged by them and deployed in the establishment of the bank. That the service providers are responsible for all the works done by the workmen deployed by them and to maintain proper discipline. It is the contractors who is required to maintain proper record of its employees under the various Labour Laws.

The memorandum of agreement executed between it and its service providers specifically contained that the service of those employees deployed by it in the establishment of bank will come to an end automatically in case IDBI Bank Ltd. refused to retain any contractual employee for any reason. The discontinuation of employment based on such terms is beyond the scope of retrenchment as defined in ID Act, 1947. That it did not terminate the service of any employee employed by its service provider and question of violation of provision of section 25-F and 25-G of ID Act does not arise.

That the bank had outsourced the job which is not perennial in nature and incidental to the business of the establishment of the bank. That it has engaged service providers in compliance with the provisions of Contract Labour (Regulation & Abolition) Act, 1970. Since the bank has adopted a policy to reduce the number of the outsourced employees and accordingly issued instruction to its service providers to reduce the number of employees deployed by them as per the requirement of a particular branch.

That the Central Govt. is not the appropriate Govt. to refer the dispute to this Tribunal. Thus, this Tribunal has no jurisdiction to entertain the present reference. The present reference is not maintainable as procedure for raising the issue of violation during the pendency of the conciliation is totally different. That the violation of provision of section 33 of the ID Act cannot be construed as an industrial dispute. That the withdrawal of the security guards pursuant to the intimation of the bank will not amount to retrenchment. Therefore, it has prayed for dismissal of the reference case.

Premier Vigilance & Security Pvt. Ltd. and S & IB Security Service, the other two contractors have filed two separate written statements where they have also taken a plea that they were engaged as a service providers by IDBI Bank Ltd. for deployment of men power for a specific period and for a specific nature of works and denied engagement of those workmen for long period of time in the establishment of bank. That in view of terms of memorandum of agreement they had with the bank the service of the employees employed by them may come to an end automatically, if the bank refused to retain those contractual employees for any reason. Withdrawal of those employees will not amount to retrenchment and question of violation of provision 25-F and 25-G will not attract. Accordingly, they have prayed for dismissal of the case.

The other contractors namely M/s. DCM Vigilance & Maintenance Service Pvt. Ltd., M/s. IB Security and Maintenance Service, International Security Organisation and Jaguar Securities have failed to appear and contest the case and as such they have been proceeded ex parte.

However, IDBI Bank Ltd. and its contractor namely Premier Vigilance & Security Pvt. Ltd. who have filed written statements have failed to proceed further with the hearing of the case by adducing evidence or by cross examining the witness of the union and as such they too have been proceeded ex parte.

The record shows the union has filed evidence in chief on affidavit of one Sri Subhra Shankar Pandit and Sri Jitendra Ahir, but for reasons best known to it has failed to examine them. However, the union has examined its Secretary Sri Anup Adhikari as W.W. 1 and who has been cross examined only by one of the contractors namely M/s. S & IB Security Services.

From the side of the union following documents have been exhibited:-

1. Letter of authority of Sri Anup Adhikari issued by the union, has been marked as Exb.W-1.
2. Copy of union's letter dt.29-05-2017 to Mr. Krishnendu Banerjee, Chief General Manager, IDBI Bank Ltd., has been marked as Exb.W-2.
3. Copy of union's letter dt. 02-06-2017 addressed to Chief General Manager, Zonal Head of IDBI Bank Ltd. and six contractor employers, has been marked as Exb.W-3.
4. Statement of case by the Secretary of the union along with name of the retrenched employees, has been marked as Exb.W-4.
5. Copy of letters of DCM Vigilance & Maintenance Service Pvt. Ltd. dt.15-06-2017 to Sri Nitai Adak, letter dt.18-07-2017 addressed to Sri Hira Thakur and letter dt.08-04-2017 addressed to Sri Sudip Saha have been marked as Exb.W-5, W-5/A and W-5/B.
6. Copy of letter of Prime Vigilance and Security Pvt. Ltd. dt.08-07-2017 addressed to Sri Ashok Chandra Naskar and Sri Abdul Mobis Sarkar dt.01-06-2017 have been marked as Exb.W-6 and W-6/A.
7. Copy of letter dt.03-06-2017 of IB Security and Maintenance Services addressed to Sri Mrityunjay Dutta and letter dt.02-06-2017 addressed to Sri Dipu Nayak have been marked as Exb.W-7 and Exb.W-7/A.
8. Copy of letter dt.02-06-2017 of ALC (C), Kolkata to the Managing Director of IDBI Bank Ltd. and to the union has been marked as Exb.W-8.
9. Copy of complaint dt.08-06-2017 by the union to ALC (C), Kolkata has been marked as Exb.W-9.
10. Copy of letter dt.30-05-2017 of IB Securities and Maintenance Services to Sri Subhra Shankar Pandit and Sri Rabindranath Bhakta has been marked as Exb.W-10.
11. Copy of letter of union to ALC (C), Kolkata dt.19-06-2017 has been marked as Exb.W-11.
12. Copy of letter dt.14-06-2017 of IDBI Bank Ltd. to ALC (C), Kolkata has been marked as Exb.W-12.
13. Union's letter dt.06-07-2017 to ALC (C), Kolkata has been marked as Exb.W-13.
14. Union's letter dt.21-07-2017 to Chief General Manager, IDBI Bank Ltd. has been marked as Exb.W-14.
15. Copy of union's letter dt.26-08-2017 to the Managing Director, DCM Vigilance and Maintenance Service Ltd. has been marked as Exb.W-15.
16. Bank's letter dt.10-10-2018 to the ALC(C), Kolkata has been marked as Exb.W-16.
17. Copy of union's letter dt.14-11-2017 to ALC (C), Kolkata has been marked as Exb.W-17.

18. Copy of note sheet of conciliation proceeding dt. 10-10-2017 has been marked as Exb.W-18 and
19. Copy of failure report dt.04-12-2017 of ALC (C), Kolkata to Ministry of Labour has been marked as Exb.W-19.

On the other hand M/s. S & IB Security & Maintenance Services, one of the contractors who has been contesting the case has failed to examine any witness or produce any document.

That both the union and contesting contractor M/s. S & IB Security & Maintenance Services have filed written notes of arguments.

Having regards to the pleadings of the principal employer and two of the contractor employers, where they have alleged the dispute being between contractors' employers and their workmen the appropriate government to refer the dispute for settlement is the State Government and not the Central Government. Thus, they have challenged the jurisdiction of this Tribunal to entertain the present reference. Thus, this Tribunal is of view before entering into the merit of the dispute, the issue whether the Central Industrial Tribunal has jurisdiction to try the present reference case or not need to be decided first?

In order to decide such issue let me reproduce the definition of appropriate government as defined in section 2(a) of the I.D. Act.

As per Section 2 (a) "appropriate Government" means—

- (i) in relation to any industrial dispute concerning any industry carried on by or under the authority of the Central Government, or by a railway company 6 [or concerning any such controlled industry as may be specified in this behalf by the Central Government] or in relation to an industrial dispute concerning 8 [ 9 [ 10[ 11[a Dock Labour Board established under section 5A of the Dock Workers (Regulation of Employment) Act, 1948 (9 of 1948), or 12[the Industrial Finance Corporation of India Limited formed and registered under the Companies Act, 1956 (1 of 1956)], or the Employees' State Insurance Corporation established under section 3 of the Employees' State Insurance Act, 1948 (34 of 1948), or the Board of Trustees constituted under section 3A of the Coal Mines Provident Fund and Miscellaneous Provisions Act, 1948 (46 of 1948), or the Central Board of Trustees and the State Boards of Trustees constituted under section 5A and section 5B, respectively, of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (19 of 1952), 13 , or the Life Insurance Corporation of India established under section 3 of the Life Insurance Corporation Act, 1956 (31 of 1956), or 14[the Oil and Natural Gas Corporation Limited registered under the Companies Act, 1956 (1 of 1956)], or the Deposit Insurance and Credit Guarantee Corporation established under section 3 of the Deposit Insurance and Credit Guarantee Corporation Act, 1961 (47 of 1961), or the Central Warehousing Corporation established under section 3 of the Warehousing Corporations Act, 1962 (58 of 1962), or the Unit Trust of India established under section 3 of the Unit Trust of India Act, 1963 (52 of 1963), or the Food Corporation of India established under section 3 or a Board of Management established for two or more contiguous States under section 16 of the Food Corporations Act, 1964 (37 of 1964), or 1 [the Airports Authority of India constituted under section 3 of the Airports Authority of India Act, 1994 (55 of 1994)], or a Regional Rural Bank established under section 3 of the Regional Rural Banks Act, 1976 (21 of 1976), or the Export Credit and Guarantee Corporation Limited or the Industrial Reconstruction Bank of India 2 [the National Housing Bank established under section 3 of the National Housing Bank Act, 1987 (53 of 1987)], or 3 [ 4 [an air transport service, or a banking or an insurance company], a mine, an oilfield] 5 [, a Cantonment Board,] or a 6 [major port, any company in which not less than fifty-one per cent. of the paid-up share capital is held by the Central Government, or any corporation, not being a corporation referred to in this clause, established by or under any law made by Parliament, or the Central public sector undertaking, subsidiary companies set up by the principal undertaking and autonomous bodies owned or controlled by the Central Government, the Central Government, and]
- (ii) in relation to any other industrial dispute, including the State public sector undertaking, subsidiary companies set up by the principal undertaking and autonomous bodies owned or controlled by the State Government, the State Government: Provided that in case of a dispute between a contractor and the contract labour employed through the contractor in any industrial establishment where such dispute first arose, the appropriate Government shall be the Central Government or the State Government, as the case may be, which has control over such industrial establishment.

In the present case the principal employer is IDBI Bank Ltd., a Central Govt. undertaking Bank. The union in their claim application and W.W. 1 in his evidence invariably alleged that at the instance of IDBI Bank Ltd. the contractors who are it service providers have terminated the services of the workmen whose names are mentioned in Exb.W-4. Therefore, this Tribunal is of view that the appropriate government in respect of IDBI Bank Ltd., a Govt. of India Undertaking bank is the Central Government.

Even for the sake of argument it is assumed the dispute is in between the contractors and its labours and contractors having been engaged by IDBI Bank Ltd., a Central Govt. Undertaking Bank, the appropriate government shall be the Central Government in view of proviso of section 2(a) (ii) and not the State Government.

Therefore, in view of provision of section 2(a) of I.D. Act, 1947 the appropriate government in the present case is the Central Government and not State Government. Consequently, this Tribunal is the appropriate forum to decide the dispute in question.

From the order of reference it appears that the concerned union has espoused the present dispute alleging termination of contractors employees by the contractors at the instance of IDBI Bank Ltd. during the pendency of a proceeding pending before ALC (C), Kolkata and it has alleged that the concerned workmen were terminated or retrenched from the services without seeking any permission from the authority concerned as required u/s 33 of the I.D. Act.

Therefore, let me find out whether there was any pending proceeding before the Labour Commissioner, Kolkata on the day the concerned workmen were retrenched?

Exhibit-W-5, W-5/A and W-5/B issued by M/s. DCM Vigilance and Maintenance Services Pvt. Ltd. Exb.-W-6 and W-6/A issued by Premier Vigilance & Security Pvt. Ltd., Exb-W-7 and -W-7/A issued by IB Securities & Maintenance Services to its employees deployed in the establishment of IDBI Bank Ltd. prima facie shows that services of those workmen to whom those letters were issued by the above contractors had come to an end w.e.f. 01-06-2017 in view of the decision taken by the IDBI Bank Ltd. for reduction of men power at its different branches and informed to its contractors vide e-mail dt. 31-05-2017. It is true all those letters were issued to those workmen after 1<sup>st</sup> of June, 2017.

That DCM Vigilance in Exb.W-5 series had offered alternative job to its workmen within 10 KMs radius of Kolkata and directed them to come down to Kolkata for alternative assignment and if they fail to report then case of next men in line would be considered for alternate assignment.

That Premier Vigilance & Security by issuing Exb.W-6 series had informed the concerned workmen about termination of their service w.e.f. 01-07-2017 i.e. on close of business on 31<sup>st</sup> May, 2017 in view of the intimation received by it from Bank for withdrawal of its men power from IDBI Bank Ltd., Rajarhat Branch and Murshidabad Branch. It further shows the contractor employer had directed those concerned workmen to report to its nearest office for settlement of full and final dues and statutory dues as per entitlement.

Exb.W-7 series shows that IB Security & Maintenance Services had informed its concerned workmen on 02-06-2017 that as per e-mail dt. 02-06-2017 received it from the bank for reduction of men power w.e.f. 01-07-2017 had withdrawn the service of those concerned workmen from their place of posting w.e.f. 01-07-2017. It further show those workmen were informed over phone also.

From those letters issued by the contractors prime facie show that IDBI Bank Ltd., the principal employer, had informed the contractor employers to withdraw their employees from its different branches w.e.f. 01-07-2017 in view of the policy taken by the bank for reduction of men power, but it appears those contractors for reason best known to them appear to have informed their employees in writing after 01-07-2017.

Exb.W-3 shows the union named IDBI Bank Ltd. Contract Workers' Union had issued notice for strike dt. 02-06-2017 to the principal employer and contractor employers for one day Nation-wide strike on 16-06-2017 and copy was forwarded to the Labour Commissioners along with the statement of their case and the list of the retrenched employees. Therefore, Exb.W-3 prima facie shows when concerned workmen were withdrawn from the establishment of the principal employer by their immediate contractor employers w.e.f. 01-06-2017, there was no any dispute pending for settlement or conciliation before any authority or Labour Commissioner. In fact it appears the union as a protest against sudden withdrawal of some of the contractors' employees decided to call for one day nation-wide strike on 16-07-2017 by issuing mandatory/statutory notice on 02-06-2017.

Under the circumstances this Tribunal does not find violation of provision of section 33 of the I.D. Act either by the principal employer or the contractor employer.

It is settled principle of law that no Tribunal can interfere with the internal policy of the Bank either on the ground that it is erroneous or on the ground that a better, fairer or wiser alternative is available unless it violates the fundamental rights of the citizens and which can be challenged before the constitutional Court. So, this Tribunal has no jurisdiction to interfere with the policy of the bank to reduce men power engaged through contractors as per its requirements and may be for restructuring its financial condition.

Nevertheless, the contractor employers or the bank before effecting any retrenchment of the contractor's employees working in the establishment of the principal employer continuously and not less than one year for whatsoever reason have to comply with the provision of section 25-F and 25-G of the I.D. Act.

But no clear picture has come on record for how long those concerned workmen were working in the establishment of the principal employer. No copy of agreement executed between the principal employer and the

contractor employers have been produced. No attendance sheet or pay slips of those workmen have come on record to show that they had worked for more than 240 days in a calendar year.

The facts remain the establishment of principal employer had engaged employees through different contractors to run its establishment then it is bound by the laws laid down in Contract Labour (Regulation & Abolition) Act, 1970.

Thus, in view of provisions of section 7 of the Contract Labour (Regulation & Abolition) Act, 1970 the Appellant establishment being a Principal Employer need to be registered under the Act in order to engage contractors' labours. That the contractors engaged by the principal employer too need to obtain a license u/s 12 of the Act of 1970.

Section 29 of the Contractor Labour (Regulation & Absorption) Act, 1970 specifically provides that the principal employer or the employer who gets its work done through persons engaged by contractors then it is bound to maintain Registers of contractors, nature of work for which they have been engaged, duration of contract and names of the employees engaged/deployed by the contractors in establishment of Appellant. The contractors too are required to maintain records of the employees engaged by them and deployed in the establishment of the principal employer. The section 29 of CLRA Act 1970 read as follows:-

*(1) Every principal employer and every contractor shall maintain such registers and records giving such particulars of contract labour employed, the nature of work performed by the contract labour, the rates of wages paid to the contract labour and such other particulars in such form as may be prescribed.*

*(2) Every principal employer and every contractor shall keep exhibited in such manner as may be prescribed within the premises of the establishment where the contract labour is employed, notices in the prescribed form containing particulars about the hours of work, nature of duty and such other information as may be prescribed.*

Further, Rule 74 and 75 of the Contract Labour (Regulation & Abolition) Central Rules, 1971 provides that 74 "Every principal employer shall maintain in respect of each registered establishment a register of contractors in Form XII" and "every contractor shall maintain in respect of each registered establishment where he employs contract labour a register in Form XIII".

In fact the above mentioned section and rules impose that principal employer not only has to maintain the register in Form-XII containing details of the contractors engaged by it and the contractor engaged by it is bound to maintain the details of the employees engaged and deployed by it in the establishment of the principal employer.

Further, it has come on record on the basis of the e-mail dt. 31-05-2017 sent by the principal employer, the contractor employers had to reduce the men power supplied by them to the different branches of IDBI Bank Ltd. as per the requirement of the branch w.e.f. 01-07-2017 and as such there was no scope for the contractor employers to serve one month's notice in writing to those workmen whom it had retrenched or withdrawn from the establishment of the bank.

Therefore, in view of the above provisions of law contained in the Contract Labour (Regulation & Abolition) Act, 1970 and Central Rules, 1971 framed thereunder the principal employer cannot shirk its responsibility towards the persons engaged by it to work in its establishment through contractors by pleading that there exists no direct employer-employee relationship between it and the employees of the contractors. Contractors cannot pay from their pockets the retrenchment compensation of its employees due to sudden decision of withdrawal of men power by the management until and unless there is a specific agreement that in case of retrenchment of any employee of the contractors at the instance of the principal employer during the subsistence of the contract, the contractor has to pay the retrenchment compensation. Further, no evidence have come on record to show that those retrenched contractors' employees were redeployed by the contractors in other establishment.

Therefore, both the principal employer and the contractor employer are jointly liable to pay retrenchment compensation u/s 25-F to those retrenched workmen who have worked continuously for not less than one year or more than 240 days in a calendar year and who have not been redeployed or reassigned by the contractors to any other employment.

In view of the above, this Tribunal holds that there is no violation of provision of section 33 of the I.D. Act. However, both the principal employer and the contractor employers having failed to pay compensation u/s 25-F of the I.D. Act to those retrenched workmen are bound to pay compensation to those retrenched workmen who have put more than 240 days of service in a calendar year during the subsistence of the contracts between the principal employer and the contractor employers and who have not been redeployed or reassigned by the contractor employers in any other establishment.

Accordingly, Reference Case no. 13 of 2018 is disposed of and award to that effect is passed.

Justice K. D. BHUTIA, Presiding Officer

नई दिल्ली, 21 अक्टूबर, 2024



**का.आ. 1997.**—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार आई डी बी आई बैंक के प्रबंधन, संबंधित नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय कोलकता के पंचाट (84/2015) प्रकाशित करती है।

[सं. एल-12012/108/2015-आई.आर. (बी-1)]

सलोनी, उप निदेशक

New Delhi, the 21st October, 2024

**S.O. 1997.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.84/2015) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Kolkata* as shown in the Annexure, in the industrial dispute between the management of IDBI Bank and their workmen.

[No. L-12012/108/2015- IR (B-I)]

SALONI, Dy. Director

#### ANNEXURE

#### CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

**Present : Justice K. D. Bhutia, Presiding Officer.**

**REF. NO. 84 OF 2015**

**Parties :** Employers in relation to the management of

**The Chief Manager, IDBI Bank Ltd.**

**VS**

**IDBI Bank Ltd. Contract Workers' Union**

Appearance:

On behalf of IDBI Bank: , Absent.

On behalf of the Union: Mr. Adhir Kumar Roy, Authorised Representative.

**Dated: 20th September, 2024**

#### A W A R D

By order No. L-12012/108/2015 –IR(B-I) dated 09-10-2015, the Central Government, Ministry of Labour in exercise of power conferred u/s 10 (1) (d) and sub-section (2A) of Industrial Dispute Act, 1947 has referred the following disputes to this Tribunal for adjudication:-

“Whether the impugned stand of the management of IDBI Bank to deny leave entitlements as applicable under West Bengal and Establishment Act is justified and legal? If not, to what relief the workmen are entitled for?”

2. Whether the impugned stand of the IDBI Bank to deny wage as applicable to “Skilled” Category to Shri Rana Dutta and Shri South Ali Mondal, as Back Office Associates (Erstwhile Data Entry Operators) have been working in CCU, RPU Kolkata Act is justified and legal? If not, to what relief the workmen are entitled for?”

3. Whether the impugned stand of the IDBI Bank not to accord due weightage to the past service and seniority for the purpose payment of admissible wages is justified and legal? If not, to what relief the workmen are entitled for?”

4. Whether the impugned stand of the IDBI Bank in denying to make payment the overdue “One Day Salary” to the employees who are working in CCU, RPU Kolkata of IDBI Bank Ltd. justified and legal? If not, to what relief the workmen are entitled for?”

The case of the union in gist is that the IDBI Bank Ltd. is a Central Govt. owned bank and categorised as Public Sector Bank. That bank have engaged workmen of different categories through different contractors on the category of semi-skilled and skilled. That it has engaged Sri South Ali Mondal and Sri Rana Dutta in semi-skilled category as Data Entry Operator/ Back Office Associates instead in skilled category workmen to work in RPU and CCU under the direct supervision and control of the officials of the bank. The duty performed by them is perennial in nature and incidental to the operation of the bank.

That the bank has failed to extend them the benefits which is provided in the West Bengal Shop & Establishment Act, 1963 with regard to the leave, wages, working hours etc. That on conclusion of the period of contractor for the period from 19-06-2013 to 30-06-2013, the bank paid salary for eleven days instead of twelve days and thereby deprived one day's wages to those workmen and involved in unfair labour practice. Thus, union has prayed an award may be passed holding the actions of the bank in non-payment of one day's wages to those workmen to be illegal and pass necessary order.

The bank has filed a written statement and where it has alleged that the present case raised by the contractor's employees is not maintainable against it as there exist no relationship of employer and employees between it and those contractor's workmen. Therefore, there cannot be an industrial dispute between it and the employees of its service provider.

It has further stated that it had entered into an agreement with M/s. Quess Corp. Ltd., the service provider on 21-10-2015. Such agreement specifically contains certain terms and conditions and as per those terms and conditions it is the sole responsibility of the service provider to comply with all the statutory provision contained in applicable Labour Laws in connection with the employees deployed by it in the establishment of the bank.

That it being a Central Govt. owned public sector bank is not covered under the Shop & Establishment Act, 1963 and as such the present case is not maintainable. The union which has raised the dispute has no locus standi to espouse the dispute. Thus, it has prayed for dismissal of the case.

The union in its rejoinder categorically denied the contents of the written objection filed by the bank.

The record shows the bank which has filed the written statement has ultimately failed to contest the case and as such the present case has been proceeded exparte against it.

The union to prove its claim and case has examined its Secretary, Sri Anup Adhikari as W.W. 1 and through him the union has exhibited the following documents:-

1. Letter of Authority of W.W. No.1, has been marked as Exb.W-1.
2. Copy of complaint lodged before the O.C., Shakespeare Sarani P.S. dt. 23-05-2014, has been marked as Exb.W-2.
3. Notice of strike dt. 18-11-2014 addressed to the bank and other eight contractor employers, has been marked as Exb.W-3.
4. Union's letter dt.09-05-2012 addressed to Talentpro India HR Pvt. Ltd., has been marked as Exb.W-4.
5. Union's letter dt.28-02-2014 addressed to seven different contractor employers, has been marked as Exb.W-5.
6. Union's letter dt.12-04-2013 addressed to Talentpro India HR Pvt. Ltd., has been marked as Exb.W-6.
7. Union's letter dt.07-11-2013 addressed to Interpro Resource Management Services Pvt. Ltd., has been marked as Exb.W-7.
8. Union's letter dt.28-02-2014 addressed to Interpro Resource Management Services Pvt. Ltd., has been marked as Exb.W-8.
9. Union's letter dt.10-11-2012 addressed to Talentpro India HR Pvt. Ltd., has been marked as Exb.W-9.
10. Bank's letter to A.L. C. (Central) dt.11-12-2014 in respect of strike, has been marked as Exb.W-10.
11. Bank's letter to A.L. C. (Central) dt.11-02-2015 in respect of strike, has been marked as Exb.W-10/A.
12. Union's letter to A.L. C. (Central) dt.04-03-2015 has been marked as Exb.W-11.
13. Union's letter dt.03-09-2015 to the Chief General Manager, Zonal Head RBG (E & NE) has been marked as Exb.W-12.
14. Failure Report dt.27-08-2015 of ALC (Central) to the Ministry of Labour & Employment has been marked as Exb.W-13.
15. Copy of proceeding before ALC in 15 pages has been marked as Exb.W-14 collectively.

The union has filed its written notes of argument.

From the materials which have come on record, it appears it is the union of the employees of the contractors or the service providers of IDBI Bank Ltd. has raised the present dispute in respect of two employees who worked as Back Office Associates in CCU, RPU, Kolkata in the establishment of IDBI Bank Ltd.

The bank though ultimately failed to contest the case or pursue with the hearing of the case, in its written statement has alleged that the provision of West Bengal Shop & Establishment Act, 1963 is not applicable to the IDBI Bank Ltd., a Central Govt, Public Sector Undertaking.

Since such issue raised by the bank touches the root of this reference and as such this Tribunal think such issue need to be decided first before entering into the merit of the case. So, let find out whether West Bengal Shop & Establishment Act, 1963 is applicable in the establishment of IDBI Bank Ltd. or not and the allegation of the union for non-compliance of the provision of West Bengal Shop & Establishment Act, 1963 by the bank in respect of contractor's employees is justified or not?

It is the matter of common sense and also admitted fact that IDBI Bank Ltd. is not a nationalised bank. As per the website of IDBI Bank it is seen the Industrial Development Bank of India (IDBI) was established in 1964 under an Act of Parliament as a wholly owned subsidiary of the Reserve Bank of India. In 1976, the ownership of IDBI was transferred to the Union government and it was made the principal financial institution for coordinating the activities of institutions engaged in financing, promoting and developing industry in India. IDBI provided financial assistance, both in rupee and foreign currencies, for green-field projects and also for expansion, modernization, and diversification purposes. In the wake of financial sector reforms unveiled by the government since 1992, IDBI also provided indirect financial assistance by way of refinancing of loans extended by State-level financial institutions and banks and by way of rediscounting of bills of exchange arising out of the sale of indigenous machinery on deferred payment terms.

After the public issue of IDBI in July 1995, the government shareholding in the bank came down from 100% to 75%.

A committee formed by RBI recommended the development financial institution (IDBI) to diversify its activity and harmonize the role of development financing and banking activities by getting away from the conventional distinction between commercial banking and developmental banking. To keep up with reforms in financial sector, IDBI reshaped its role from a development finance institution to a commercial institution. With the *Industrial Development Bank (Transfer of Undertaking and Repeal) Act, 2003*, IDBI attained the status of a limited company viz., IDBI Ltd.

Subsequently, in September 2004, the Reserve Bank of India incorporated IDBI as a 'scheduled bank' under the *RBI Act, 1934*. The commercial banking arm, IDBI Bank, was merged into IDBI in 2005.

The merger was expected to streamline operations of the bank. However, IDBI continued to base its policy towards industrial sector like the erstwhile IDBI entity did. This resulted in the retail business of the bank to be limited to 13 percent of its total business. As of March 2018, the total Non-Performing Assets (NPA) rose to ₹55,588 crore (equivalent to ₹740 billion or US\$8.9 billion in 2023) and were about 28 percent of its total loans. This was the highest among Indian banks. The Union government intervened, with Life Insurance Corporation bailing out the bank with an infusion of ₹9,300 crores.

So, it appears that IDBI Bank Ltd. is not a Nationalised Bank rather a bank owned and controlled by Central Govt. and regulated by Reserve Bank of India.

Further, Section 4 of West Bengal Shops & Establishments Act, 1963 provides that the Act or some of its provisions not applicable to certain establishments, shops and persons and provides that the Act is not applicable to :

- a) Office of or under the Central or State Govt., the Reserve Bank of India, any Railway Administration or any local authority.
- b) Any Railway services, Airways service, water transport service, tramways, or motor service, postal, telegraph or telephone services, any system of public conservancy or sanitation or any industry, business or undertaking with supplies power, light or water to the public and those are run by or under the authority of Central or State Govt. or Public Undertakings.....

Thus, from above it is seen that IDBI Bank Ltd. being a Central Govt. owned public sector bank and regulated by RBI cannot be equated with other nationalised banks. More so, the union has failed to produce the service rules of the IDBI Bank Ltd. to show that the bank has its own service rules in respect of employees and which is totally different from the one which is applicable to ordinary Central Govt. employees. Therefore, this Tribunal is of view the West Bengal Shops & Establishment Act, 1963 is not applicable to IDBI Bank Ltd.

That apart, in the present case the union which has espoused the dispute appears to be the union of contractor's employees and not that of permanent regular employees of the bank. The union has failed to produce the appointment letters of Shri South Ali Mondal and Sri Rana Dutta to prove on what terms and conditions they were engaged by which contractor of the bank and in what capacity and also the duration of their appointment and also their pay slips to prove that they were not paid one day wages by the bank for working as skilled workmen or they

were paid directly by the bank and not by the contractor who deployed them to work as Back Office Associates in CCU RPU, Kolkata. The union has also failed to produce the contract executed between the bank and the concerned contractor to prove that those two persons supplied by the contractor would be working totally under the control and supervision of the bank or that the bank would directly pay their wages for the work done by them.

The union having raised dispute in respect of contractors' employees then question of giving weightage to the past service and seniority for the purpose of payment of admissible wages by the principal employer does not arise.

Having regards to the discussion made above, this Tribunal holds the dispute under reference has no merit and not maintainable being misconceived and liable to be dismissed.

Accordingly, Reference No.84 of 2015 is dismissed and an award to that effect is passed.

Justice K. D. BHUTIA, Presiding Officer

नई दिल्ली, 21 अक्टूबर, 2024

**का.आ. 1998.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ई.सी.एल. के प्रबंधन के संबंध नियोजको और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण – सह – श्रम न्यायालय, आसनसोल के पंचाट (सन्दर्भ संख्या 03/2018) को प्रकाशित करती है, जो केन्द्रीय सरकार को 17/10/2024 को प्राप्त हुआ था।

[सं. एल –22012/120/2017–आई.आर. (सी.एम-II)]

मणिकंदन.एन, उप निदेशक

New Delhi, the 21st October, 2024

**S.O. 1998.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (**Reference.I.D.No.03/2018**) of the **Central Government Industrial Tribunal-cum-Labour Court, Asansol** as shown in the Annexure, in the industrial dispute between the Management of **E.C.L.** and their workmen, received by the Central Government on **17/10/2024**.

[No. L-22012/120/2017 – IR (CM-II)]

MANIKANDAN. N, Dy. Director

#### ANNEXURE

#### BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL -CUM- LABOUR COURT, ASANSOL.

**PRESENT:** Shri Ananda Kumar Mukherjee,  
Presiding Officer,  
C.G.I.T-cum-L.C., Asansol.

#### REFERENCE CASE NO. 03 OF 2018

**PARTIES:** Abdhesh Kumar Sharma  
**Vs.**  
Management of Chapui Khas Colliery of ECL

#### **REPRESENTATIVES:**

For the Union/Workman: Mr. Asit Mukherjee, Advocate.  
For the Management of ECL: Mr. P. K. Das, Advocate.

**INDUSTRY:** Coal.

**STATE:** West Bengal.

**Dated:** 23.09.2024

#### **A W A R D**

In exercise of powers conferred under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Government of India through the Ministry of Labour, vide its Order

**No. L-22012/120/2017-IR(CM-II)** dated 22.12.2017 has been pleased to refer the following dispute between the employer, that is the Management of Chapui Khas Colliery of Eastern Coalfields Limited and their workman for adjudication by this Tribunal.

### SCHEDULE

*“ Whether the action of the Management of M/s. Eastern Coalfields Ltd. in relation to its Chapui Khas Colliery under Satgram Area in not extending increment @ 3% w.e.f. 24.08.2010 and not promoting the working Sri Abdhesh Kumar Sharma w.e.f. 27.09.2013 are just and legal? If not, to what relief the workman is entitled to? ”*

1. On receiving Order **No. L-22012/120/2017-IR(CM-II)** dated 22.12.2017 from the Government of India, Ministry of Labour, New Delhi for adjudication of the dispute, a **Reference case No. 03 of 2018** was registered on 09.01.2018 and an order was passed for issuing notice to the parties through registered post, directing them to appear and submit their written statements along with relevant documents in support of their claims and a list of witnesses.

2. The case is fixed up today for evidence of the workman as special chance. Mr. P. K. Das, learned advocate appeared for the management of Eastern Coalfields Limited. Abdhesh Kumar Sharma, the workman appeared and filed a petition, informing that he is not interested to proceed further with this case and the case may be dismissed for non-prosecution. Application is considered.

3. After issuing Notice under registered post, written statements were filed by both parties. Abdhesh Kumar Sharma filed his affidavit-in-chief on 13.03.2023. This case relates to his objection against not extending the benefit of increment @ 3 % w.e.f. 24.08.2010 and for promotion w.e.f. 27.09.2013. Since the workman has not inclined to proceed further with the case, the Industrial Dispute is dismissed for non-prosecution. Let a No Dispute award be drawn up.

Hence,

### ORDERED

that a No Dispute Award be drawn up in the above Reference case. Let copies of the Award in duplicate be sent to the Ministry of Labour and Employment, Government of India, New Delhi for information and Notification.

ANANDA KUMAR MUKHERJEE, Presiding Office

नई दिल्ली, 21 अक्टूबर, 2024

**का.आ. 1999.**— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ई.सी.एल. के प्रबंधन के संबंध नियोजको और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण - सह - श्रम न्यायालय, आसनसोल के पंचाट (सन्दर्भ संख्या 32/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 17/10/2024 को प्राप्त हुआ था।

[सं. एल -22012/208/2005-आई.आर. (सी.एम-II)]

मणिकंदन.एन, उप निदेशक

New Delhi, the 21st October, 2024

**S.O. 1999.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (**Reference.I.D.No.32/2006**) of the **Central Government Industrial Tribunal-cum-Labour Court, Asansol** as shown in the Annexure, in the industrial dispute between the Management of **E.C.L.** and their workmen, received by the Central Government on **17/10/2024**.

[No. L-22012/208/2005 – IR (CM-II)]

MANIKANDAN. N, Dy. Director

### ANNEXURE

**BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL -CUM- LABOUR COURT,  
ASANSOL.**

**PRESENT:** Shri Ananda Kumar Mukherjee,  
Presiding Officer,  
C.G.I.T-cum-L.C., Asansol.

**REFERENCE CASE NO. 32 OF 2006**

**PARTIES:**

Batul Dhangar

**Vs.**

Management of Chora 10 Pits Colliery of ECL

**REPRESENTATIVES:**

For the Union/Workman: None.

For the Management of ECL: Mr. P. K. Das, Advocate.

**INDUSTRY:** Coal**STATE:** West Bengal.**Dated:** 04.09.2024**A W A R D**

In exercise of powers conferred under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Government of India through the Ministry of Labour, vide its Order **No. L-22012/208/2005-IR(CM-II)** dated 31.07.2006 has been pleased to refer the following dispute between the employer, that is the Management of Chora 10 Pits Colliery, under Kenda Area of Eastern Coalfields Limited and their workman for adjudication by this Tribunal.

**SCHEDULE**

*“ Whether the action of the management of Chora 10 Pits Colliery, under Kenda Area of M/s Eastern Coalfields Limited in dismissing Sh. Batul Dhangar, Conveyor operator, U.M. No. 705882 w.e.f. 30.6.04 is legal and justified? If not, to what relief is the workman entitled? ”*

1. On receiving Order **No. L-22012/208/2005-IR(CM-II)** dated 31.07.2006 from the Government of India, Ministry of Labour, New Delhi for adjudication of the dispute, a **Reference case No. 32 of 2006** was registered on 14.08.2006 and an order was passed for issuing notice to the parties through registered post, directing them to appear and submit their written statements along with relevant documents in support of their claims and a list of witnesses.

2. Mr. P. K. Das, learned advocate for the management of Eastern Coalfields Limited is present. The case is fixed up today for cross-examination of workman witness. Batul Dhangar, dismissed workman filed his affidavit-in-chief on 28.03.2017. The case was thereafter fixed for evidence of workman witness. Workman appears to have remained absent since 05.06.2017. Fresh Notice under registered post was issued to the workman in compliance with order dated 03.01.2023 but none appeared for the workman on 20.03.2023, 20.06.2023, 28.11.2023, 30.04.2024 and today i.e. 04.09.2024.

3. Both parties appeared and filed their written statements. The case was thereafter fixed for evidence of workman witness but none turned up on behalf of the workman even after a second Notice was issued to him under registered post but the Notice was returned without service. Union representative took no step. In my considered view workman appears to be disinclined in proceeding further with this case. Industrial Dispute is therefore dismissed. Let a No Dispute Award be drawn.

Hence,

**ORDERED**

that a No Dispute Award be drawn up in the above Reference case. Let copies of the Award in duplicate be sent to the Ministry of Labour and Employment, Government of India, New Delhi for information and Notification.

ANANDA KUMAR MUKHERJEE, Presiding Officer

नई दिल्ली, 21 अक्तूबर, 2024

**का.आ. 2000.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ई.सी.एल. के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण – सह – श्रम न्यायालय, आसनसोल के पंचाट (सन्दर्भ संख्या 38/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 17/10/2024 को प्राप्त हुआ था।

[सं. एल -22012/143/2012-आई.आर. (सी.एम-II)]

मणिकंदन.एन, उप निदेशक

New Delhi, the 21st October, 2024

**S.O. 2000.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award ( **Reference.I.D.No.38/2012**) of the **Central Government Industrial Tribunal-cum-Labour Court, Asansol** as shown in the Annexure, in the industrial dispute between the Management of **E.C.L.** and their workmen, received by the Central Government on **17/10/2024**.

[No. L-22012/143/2012 – IR (CM-II)]

MANIKANDAN. N, Dy. Director

#### ANNEXURE

#### BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL -CUM- LABOUR COURT, ASANSOL.

**PRESENT:** Shri Ananda Kumar Mukherjee,  
Presiding Officer,  
C.G.I.T-cum-L.C., Asansol.

#### REFERENCE CASE NO. 38 OF 2012

**PARTIES:** Barmdeo Bhuia  
**Vs.**  
Management of 1 & 2 Incline, Jhanjra Project of ECL

#### REPRESENTATIVES:

For the Union/Workman: Mr. Rakesh Kumar, President, Koyala Mazdoor Congress.  
For the Management of ECL: Mr. P. K. Das, Advocate.

**INDUSTRY:** Coal.

**STATE:** West Bengal.

**Dated:** 30.09.2024

#### A W A R D

In exercise of powers conferred under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Government of India through the Ministry of Labour, vide its Order **No. L-22012/143/2012-IR(CM-II)** dated 26.10.2012 has been pleased to refer the following dispute between the employer, that is the Management of 1 and 2 Incline of Jhanjra Project of Eastern Coalfields Limited and their workman for adjudication by this Tribunal.

#### SCHEDULE

*“ Whether the action of the management of 1&2 Incline of Jhanjra Project of M/s. Eastern Coalfields Limited in dismissing Shri Barmdeo Bhuia, Tyndal, from service w.e.f. 31.07.97 is legal and justified? What relief the workman is entitled to? ”*

1. On receiving Order **No. L-22012/143/2012-IR(CM-II)** dated 26.10.2012 from the Government of India, Ministry of Labour, New Delhi for adjudication of the dispute, a **Reference case No. 38 of 2012** was registered on 14.11.2012 and an order was passed for issuing notice to the parties through registered post, directing them to appear and submit their written statements along with relevant documents in support of their claims and a list of witnesses.

2. Mr. P. K. Das, learned advocate has appeared for Eastern Coalfields Limited. For ends of justice the case has been fixed up today for filing legal heirship certificate in respect of Late Barmdeo Bhuia for substitution as well as for evidence of workman witness, in default, the case is to be disposed of in the form of a No Dispute Award. It is 12.10 pm now. On repeated calls none appeared for the workman or his dependent. Mr. Rakesh Kumar, union representative is not found available.

3. After registration of the case Notice were issued to the parties concerned. Written statement has been filed by the President, Koyala Mazdoor Congress as well as by the management of Eastern Coalfields Limited. The aggrieved

workman died on 21.09.2017. Since then, no substitution of legal heirs of the deceased has been made. Concerned union has not proceeded diligently in this case. Tribunal has extended ample opportunity to the party for substitution but none turned up. Under such circumstances this Industrial Dispute is disposed of for non-prosecution. Let a No Dispute Award be drawn up.

Hence,

### ORDERED

that a No Dispute Award be drawn up in the above Reference case. Let copies of the Award in duplicate be sent to the Ministry of Labour and Employment, Government of India, New Delhi for information and Notification.

ANANDA KUMAR MUKHERJEE, Presiding Officer

नई दिल्ली, 21 अक्टूबर, 2024

**का.आ. 2001.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ई.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण - सह - श्रम न्यायालय, आसनसोल के पंचाट (सन्दर्भ संख्या 13/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 17/10/2024 को प्राप्त हुआ था।

[सं. एल -22012/126/2013-आई.आर. (सी.एम-II)]

मणिकंदन.एन, उप निदेशक

New Delhi, the 21st October, 2024

**S.O. 2001.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award ( **Reference.I.D.No.13/2013**) of the **Central Government Industrial Tribunal-cum-Labour Court, Asansol** as shown in the Annexure, in the industrial dispute between the Management of **E.C.L.** and their workmen, received by the Central Government on **17/10/2024**.

[No. L-22012/126/2013 – IR (CM-II)]

MANIKANDAN. N, Dy. Director

### ANNEXURE

#### BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL -CUM- LABOUR COURT, ASANSOL.

**PRESENT:** Shri Ananda Kumar Mukherjee,  
Presiding Officer,  
C.G.I.T-cum-L.C., Asansol.

#### REFERENCE CASE NO. 13 OF 2013

**PARTIES:** Ranbir Singh  
Vs.  
Management of S.S.I Colliery of ECL

#### **REPRESENTATIVES:**

For the Union/Workman: Mr. Rakesh Kumar, President, Koyala Mazdoor Congress.  
For the Management of ECL: Mr. P. K. Das, Advocate.

**INDUSTRY:** Coal

**STATE:** West Bengal.

**Dated:** 10.09.2024

### A W A R D

In exercise of powers conferred under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Government of India through the Ministry of Labour, vide its Order



**No. L-22012/126/2013-IR(CM-II)** dated 18.09.2013 has been pleased to refer the following dispute between the employer, that is the Management of S.S.I. Colliery under Sripur Area of Eastern Coalfields Limited and their workman for adjudication by this Tribunal.

### SCHEDULE

*“ Whether the action of the regarding stoppage of two increments of Sri Ranbir Singh was fair, just while the Nandlal Chatterjee who was also responsible exempted from the charges without any enquiry, if not, so what relief management can provide to Sri Ranbir Singh? ”*

1. On receiving Order **No. L-22012/126/2013-IR(CM-II)** dated 18.09.2013 from the Government of India, Ministry of Labour, New Delhi for adjudication of the dispute, a **Reference case No. 13 of 2013** was registered on 14.02.2014 and an order was passed for issuing notice to the parties through registered post, directing them to appear and submit their written statements along with relevant documents in support of their claims and a list of witnesses.

2. Mr. P. K. Das, learned advocate for the management of Eastern Coalfields Limited is present. Mr. Rakesh Kumar, union representative appeared on behalf of Ranbir Singh, the petitioner. The case is fixed up today for appearance of workman and evidence. On repeated calls at 12.40 pm the aggrieved workman is not found available.

3. On a perusal of record, I find that the workman has not appeared on consecutive dates and for ends of justice the case was fixed for evidence of workman witness on 03.05.2024, in default, evidence was to be closed. On 03.05.2024 another opportunity was granted to the workman, fixing the case today for evidence. Dispute relates to an issue as to whether stoppage of two increments of Ranbir Singh without enquiry is fair or not. Mr. Rakesh Kumar submits that Ranbir Singh has already superannuated from service and has not contacted him thereafter. Till date no evidence has been adduced by any party. The Charge Sheet and Enquiry Proceeding are lying in the record. Since workman has not taken any initiative to assert his case, there is no point in keeping the matter pending. Under such circumstances Industrial Dispute is dismissed for default. Let a No Dispute Award be drawn up.

Hence,

### ORDERED

that a No Dispute Award be drawn up in the above Reference case. Let copies of the Award in duplicate be sent to the Ministry of Labour and Employment, Government of India, New Delhi for information and Notification.

ANANDA KUMAR MUKHERJEE, Presiding Officer

नई दिल्ली, 21 अक्टूबर, 2024

**का.आ. 2002.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ई.सी.एल. के प्रबंधन के संबद्ध नियोजको और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में **केन्द्रीय सरकार औद्योगिक अधिकरण - सह - श्रम न्यायालय**, आसनसोल के पंचाट (सन्दर्भ संख्या 42/2022) को प्रकाशित करती है, जो केन्द्रीय सरकार को 17/10/2024 को प्राप्त हुआ था।

[सं. एल -22012/62/2022-आई.आर. (सी.एम-II)]

मणिकंदन.एन, उप निदेशक

New Delhi, the 21st October, 2024

**S.O. 2002.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award ( **Reference.I.D.No.42/2022**) of the **Central Government Industrial Tribunal-cum-Labour Court, Asansol** as shown in the Annexure, in the industrial dispute between the Management of **E.C.L.** and their workmen, received by the Central Government on **17/10/2024**.

[No. L-22012/62/2022 – IR (CM-II)]

MANIKANDAN. N, Dy. Director

### ANNEXURE

**BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL -CUM- LABOUR COURT,  
ASANSOL.**

**PRESENT:** Shri Ananda Kumar Mukherjee,  
Presiding Officer,

C.G.I.T-cum-L.C., Asansol.

**REFERENCE CASE NO. 42 OF 2022**

**PARTIES:**

Mongla Majhi

**Vs.**

Management of Amritnagar Colliery of ECL

**REPRESENTATIVES:**

For the Union/Workman: Mr. Rakesh Kumar, President, Koyala Mazdoor Congress.

For the Management of ECL: Mr. Sayantan Mukherjee, Advocate.

**INDUSTRY:** Coal.

**STATE:** West Bengal.

**Dated:** 30.09.2024

**A W A R D**

In exercise of powers conferred under clause (d) of Sub-section (1) and Sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Government of India through the Ministry of Labour, vide its Order **No. L-22012/62/2022-IR(CM-II)** dated 29.08.2022 has been pleased to refer the following dispute between the employer, that is the Management of Amritnagar Colliery under Kunustoria Area of Eastern Coalfields Limited and their workman for adjudication by this Tribunal.

**SCHEDULE**

*“ Whether the demand raised by Koyala Mazdoor Congress vide letter dated 04/01/2021 (copy enclosed) against the Management of Amrit Nagar Colliery, Kunustoria Area of Eastern Coalfields Ltd. for not regularizing as Peon to Shri Mongla Majhi, Mason, UM No. 122119, who was appointed on 27/03/2001 as Piece Rated Trainee (UG) in place of his father (Late Ramesh Majhi), and doing surface duty as Peon w.e.f. 06/9/2014 in absence of regular Peon vide Office Order No. Agent/4100/2014/2005 dated 06/09/2014 (copy enclosed) is fair, legal and justified? If yes, what relief the concerned workman is entitled to? ”*

1. On receiving Order **No. L-22012/62/2022-IR(CM-II)** dated 29.08.2022 from the Government of India, Ministry of Labour, New Delhi for adjudication of the dispute, a **Reference case No. 42 of 2022** was registered on 29.08.2022 / 01.09.2022 and an order was passed for issuing notice to the parties through registered post, directing them to appear and submit their written statements along with relevant documents in support of their claims and a list of witnesses.

2. The aggrieved workman filed his written statement in this case on 22.11.2022 through Mr. H. L. Soni, Assistant General Secretary, Koyala Mazdoor Congress. In gist, the contention of the workman, delineated in the written statement is that Mongla Majhi was appointed as an Underground Mason Mazdoor on 27.03.2001 at Amrit Nagar Colliery under Kunustoria Area of Eastern Coalfields Limited (hereinafter referred to as ECL). He was assigned with the work of a Peon on surface duty w.e.f. 06.09.2014 in terms with Office Order No. Agent/4100/2014/2005 dated 06.09.2014. Mongla Majhi submitted his application before the employer for his regularization as a Peon on surface duty but the management did not consider the same. The union raised an Industrial Dispute for regularization of Mongla Majhi as peon on surface duty.

3. Management contested the case by filing their written statement on 28.04.2023. According to the management Mongla Majhi is an Underground Masson at Amrit Nagar Colliery. On the basis of his application seeking surface duty on medical ground he was referred to the Apex Medical Board of ECL on 20.11.2013 and the Apex Medical Board made a recommendation for his alternate surface job for one year and then review. After completion of one year of surface job w.e.f. 20.11.2013, Mongla Majhi did not appear before any Medical Board in spite of repeated and regular verbal reminders. He was instructed to appear before the Apex Medical Board of ECL for his medical review vide letter No. Agent/4100/2021/2723 dated 15.03.2021. He was also requested to submit documents relating to his medical treatment but till date Mongla Majhi has not submitted such medical documents. According to the norms and guidelines of the employer company an underground employee cannot be regularized as Peon on surface in Technical and Supervisory Grade H. Promotion / Selection of an employee to a higher post is done by a committee constituted by the competent authority and the Departmental Promotion Committee (hereinafter referred to as DPC) has to ensure that all the employees are given the opportunity to participate. Workman performing

underground mining work are not permitted to accept surface job unless he is recommended by the Apex Medical Board or DPC. In the instant case the workman is not working as a peon continuously and uninterruptedly, rather he was deployed as and when required. The management denied that Mongla Majhi was deployed to work as a Peon on 06.09.2014 due to the requirement of the management or that he has been discharging his duty as a Peon since such time to the satisfaction of his supervisor. It is urged that the action of the management in not regularizing the workman is fully justified and the Industrial Dispute is liable to be dismissed.

4. Mongla Majhi filed his affidavit-in-chief and examined himself as Workman Witness – 1. He faced cross-examination by the management. Admittedly, he joined as an Underground Masson Mazdoor at Amrit Nagar Colliery and appeared before a Medical Board for suitability of job, where he was recommended by the Medical Board on 20.11.2013 for an alternate surface job for one year and thereafter review. In course of his examination-in-chief the witness stated that he was recommended for surface job for one year as per recommendation of the Medical Board which was required to be reviewed after one year. The witness also produced the following documents:

- (i) Copy of the Identity Card of Mongla Majhi, issued by the employer has been produced as Exhibit W-1.
- (ii) Copy of the Office Order dated 27/28.01.2014 regarding recommendation for his surface job, as Exhibit W-2.
- (iii) Copy of the Office Order dated 06.09.2014 whereby Mongla Majhi was placed as a Peon and allowed surface job, as Exhibit W-3.
- (iv) Copy of the application of Mongla Majhi submitted on 15.01.2016, praying for his regularization in the post of peon, as Exhibit W-4.
- (v) Copy of the application of Mongla Majhi submitted on 09.03.2016, praying for his regularization in the post of peon, as Exhibit W-5.
- (vi) Copy of the application of Mongla Majhi dated 06.01.2021, praying for his regularization in the post of peon, as Exhibit W-6.
- (vii) Copy of the letter dated 15.03.2021 of the Manager, Amritnagar Colliery directing the employee to submit his papers related to medical treatment, has been marked as Exhibit W-7.

The witness deposed that he did not receive any official letter from the management asking him to appear for reviewing his medical state.

5. In cross-examination the witness stated that he was deputed to perform surface duty for one year. After 20.11.2014 he never appeared before any Medical Board for review of his health condition. He did not issue any letter to the management that he was unable to appear before review committee. In course of cross-examination of WW-1 the witness admitted his signature on letter 23.02.2021 where he was requested to submit papers relating to his medical treatment. Copy of the said letter has been marked as Exhibit M-1 (on admission). Witness further stated that he did not submit any application before DPC at Amritnagar Colliery. The witness denied the suggestion that there is no vacancy in the post of Peon at Amritnagar Colliery according to the Manpower Budget and only one post of Peon is lying vacant since the death of a permanent Peon, a few years ago. He also denied that he is not entitled to be regularized to the post of Peon or that he intentionally avoided to appear before the Medical Board for review.

6. Mr. Dinabandhu Mondal appeared as the Management Witness and filed his affidavit-in-chief. The witness has been examined as Management Witness - 1. The witness stated that on the basis of own representation of the workman and on recommendation of Special Medical Board dated 20.11.2013 he was assigned with surface duty for one year from 20.11.2013. Copy of the recommendation report has been marked as Exhibit M-1. On 15.03.2021 a letter was issued to Mongla Majhi for review of his medical condition by the Medical Board after completion of one year and to submit his medical papers. Mongla Majhi put his signature on the document. Copy of the letter has been marked as Exhibit M-2 and signature of Mongla Majhi on the letter has been marked as Exhibit M-2/1. It is deposed that Mongla Majhi did not comply the instruction in the Notice and he did not appear before the Medical Board. Subsequently, another letter dated 12/13.07.2021 was issued to Mongla Majhi as reminder to submit his medical report within seven days. Copy of the letter has been produced as Exhibit M-3. Instead of appearing before the Medical Board for review of his health condition, Mongla Majhi filed an application before the management, seeking his posting as Peon on surface. It transpires from the evidence of witness that the DPC considers for providing surface job to underground workers.

7. In cross-examination the management witness deposed that Mongla Majhi was deputed for surface job on the basis of recommendation of the Medical Board. The witness disclosed that the employee was engaged on miscellaneous job on surface and he was not posted on regular basis. The witness deposed that the management did not take steps for constitution of Medical Board for review of his health condition. He further deposed that there is no policy by which a person transferred from underground to surface had to be regularized for duty on surface and such posting on regular basis can only be done by the DPC. The witness also deposed that Mongla Majhi was receiving

higher pay while he was working as a regular underground workman and stated that he was not entitled to difference of wages for inferior work done on surface.

8. On 07.05.2024 finding that Mongla Majhi never appeared before the Medical Board since 2014 for review, an order was passed by this Tribunal, whereby the Manager (Personnel), Amritnagar Colliery was directed to issue an order for referring Mongla Majhi for his medical examination at Central Hospital, Kalla within a fortnight from issuance of the order and to find out if he is fit for his underground job and to submit a report before the Tribunal. On 23.09.2024 the case was fixed for hearing of argument and the management filed a copy of letter dated 26/27.05.2024 addressed to Mongla Majhi, whereby he was directed to appear before the Medical Board on 05.06.2024 at 09.00 am before the Chief Medical Officer's Office at Sanctoria Hospital for his medical examination. At the outset Mr. Sayantan Mukherjee, learned advocate for the management submitted that though Notice were issued to Mongla Majhi for appearing before the Chief Medical Officer's Office at Sanctoria Hospital for review of his health condition, but workman failed to appear on the date fixed. Management also filed a copy of letter dated 28.06.2024 submitted by Mongla Majhi addressed to the Manager, Mahabir Colliery, wherein he disclosed that he was unable to appear before the Chief Medical Officer's Office at Sanctoria Hospital due to his illness.

9. The case was taken up for hearing of argument. The union representative submitted that the workman is performing duty of a Peon, which is a surface job, for several years and he is entitled to be regularized as a Peon. Refuting the claim of the union, Mr. Sayantan Mukherjee, learned advocate argued that the workman is not entitled to be regularized in surface job unless the DPC considered the case at an appropriate time along with other eligible candidates, who have been performing underground job for several years. It is further argued that Mongla Majhi at his own instance sought for surface job on medical ground and he was recommended by Apex Medical Board, Kalla Hospital on 20.11.2013 for an alternative surface duty on medical ground for one year. It is argued that thereafter the workman did not appear before any Medical Board nor did he produce any medical documents after review of his health condition. Learned advocate drew my attention to the letter dated 12/13.07.2021 (Exhibit M-3) where a reminder was given to Mongla Majhi to submit his review report within seven days of receipt of the letter. It is submitted that once having taken up the surface job the workman never complied the condition set forth and did not submit his medical report after a period of one year. It is contended that the workman cannot derive the benefit of being regularized in the surface job unless the competent authority and the DPC recommended him for a regular surface job on considering the candidature of other under ground employees.

10. I have considered the facts and circumstances of the case, evidence adduced by parties as well as arguments advanced on behalf of both parties. Exhibit M-1, a report of the Apex Medical Board reveals that Mongla Majhi, designated as Underground Trammer at Amritnagar Colliery was suffering from "Seizure disorder" since 2006. He was under medical treatment regularly. The Apex Medical Board recommended for an alternative service job for one year and review his health condition. On 15.03.2021 the Manager of Amritnagar Colliery issued a letter to Mongla Majhi, reminding him that the Medical Board of Central Hospital, Kalla on 20.11.2013 had recommended for providing him an alternate service job for one year and also proposed for review of his health condition after completion of one year. The management in their letter advised him to submit medical treatment paper after a period of one year and also a copy of the review report. The aggrieved workman did not comply the condition once again and a second reminder was issued to the workman on 13.07.2021 (Exhibit M-3), reminding him to submit his medical treatment papers within seven days of receipt of the letter. The workman neither complied the direction of the management in Exhibit M-2 and M-3 nor did he produce any medical documents before this Tribunal to establish that he is still suffering from the ailment due to which which he was provided with an alternate surface job. It appears from letter dated 26/27.05.2024 that Mongla Majhi was advised to appear on 05.06.2024 in the Boardroom of the Chief Medical Officer's Office at Sanctoria Hospital for producing his treatment and investigation papers, in original but he did not comply the same. In my considered view the workman does not deserve to be regularized in any surface job unless he submits his documents relating to his medical treatment and his health condition on review as had been advised by the Apex Medical Board at the time of recommending the surface job. The workman has produced an Office Order dated 06.09.2014 (Exhibit W-3) where it is stated that in absence of regular Peon Mongla Majhi, who has been deployed for surface duty was authorized to distribute and collect daks from Area Office, Kunustoria Area till further order. The Office Order is merely an arrangement made to accommodate the surface duty of Mongla Majhi. It does not create any right in favour of the workman to claim his regularization as a Peon for surface duty. Any regularization of such nature requires to be considered by the DPC of the management.

11. In light of my above discussion, I hold that the workman is not entitled to be regularized as Peon, only for being deputed on surface duty for one year. The Industrial Dispute is therefore dismissed on contest.

Hence,

### ORDERED

that the Industrial Dispute is therefore dismissed on contest against the workman. An award be drawn up in light of my above findings. Let copies of the Award in duplicate be sent to the Ministry of Labour, Government of India, New Delhi for information and Notification.

ANANDA KUMAR MUKHERJEE, Presiding Officer

नई दिल्ली, 21 अक्टूबर, 2024

**का.आ. 2003.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ई.सी.एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण - सह - श्रम न्यायालय, आसनसोल के पंचाट (सन्दर्भ संख्या 12/2007 को प्रकाशित करती है, जो केन्द्रीय सरकार को 17/10/2024 को प्राप्त हुआ था।

[सं. एल -22012/1/2006-आई.आर. (सी.एम-II)]

मणिकंदन.एन, उप निदेशक

New Delhi, the 21st October, 2024

**S.O. 2003.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award ( **Reference.I.D.No.12/2007**) of the **Central Government Industrial Tribunal-cum-Labour Court, Asansol** as shown in the Annexure, in the industrial dispute between the Management of **E.C.L.** and their workmen, received by the Central Government on **17/10/2024**.

[No. L-22012/1/2006 – IR (CM-II)]

MANIKANDAN. N, Dy. Director

## ANNEXURE

**BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL -CUM- LABOUR COURT,  
ASANSOL.**

**PRESENT:** Shri Ananda Kumar Mukherjee,  
Presiding Officer,  
C.G.I.T-cum-L.C., Asansol.

**REFERENCE CASE NO. 12 OF 2007**

**PARTIES:** Balrup Yadav  
(represented by the dependant son Raj Kumar Yadav)

**Vs.**

Management of Shankarpur Colliery of ECL

**REPRESENTATIVES:**

For the Union/Workman: None.  
For the Management of ECL: Mr. P. K. Goswami, Advocate.

**INDUSTRY:** Coal  
**STATE:** West Bengal.  
**Dated:** 04.09.2024

**A W A R D**

In exercise of powers conferred under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Government of India through the Ministry of Labour, vide its Order **No. L-22012/1/2006-IR(CM-II)** dated 19.02.2007 has been pleased to refer the following dispute between the employer, that is the Management of Shankarpur Colliery under Bankola Area of Eastern Coalfields Limited and their workman for adjudication by this Tribunal.

**SCHEDULE**

*“Whether the action of the management of Shankarpur Colliery under Bankola Area of M/s. Eastern Coalfields Limited in denying employment to the dependant of Late Balrup Yadav, Ex.Tyndal, who died while in service, is legal and justified? If not, to what relief the dependant of the deceased workman is entitled? ”*

1. On receiving Order **No. L-22012/1/2006-IR(CM-II)** dated 19.02.2007 from the Government of India, Ministry of Labour, New Delhi for adjudication of the dispute, a **Reference case No. 12 of 2007** was registered on 03.05.2007 and an order was passed for issuing notice to the parties through registered post, directing them to appear and submit their written statements along with relevant documents in support of their claims and a list of witnesses.
2. Mr. P. K. Goswami, learned advocate for Eastern Coalfields Limited is present. The case is fixed up today for appearance of legal representatives of the workman and evidence of workman witness. On repeated calls at 01.10 pm none appeared for the dependent of the deceased workman.
3. After registration of the case both parties appeared and filed their written statements. Raj Kumar Yadav, Son of Balrup Yadav, claiming employment as dependant in place of his father, who died in harness, had filed an affidavit-in-chief on 29.09.2015. Several dates were fixed for evidence of workman witness from 29.12.2015 till 04.09.2024 i.e. today. The dependant son did not turn up despite fresh Notice was issued at his address directing him to appear before the Tribunal on 29.11.2023. None appeared for the deceased workman on consecutive dates for the third time. Considered.
4. It appears to me that dependants of the deceased workman are not inclined to proceed further and therefore Industrial Dispute referred for adjudication is dismissed for non-prosecution. Let a No Dispute Award be drawn up.

Hence,

**ORDERED**

that a No Dispute Award be drawn up in the above Reference case. Let copies of the Award in duplicate be sent to the Ministry of Labour and Employment, Government of India, New Delhi for information and Notification.

ANANDA KUMAR MUKHERJEE, Presiding Officer

नई दिल्ली, 21 अक्टूबर, 2024

**का.आ. 2004.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ई.सी.एल. के प्रबंधन के संबद्ध नियोजको और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण - सह - श्रम न्यायालय, आसनसोल के पंचाट (सन्दर्भ संख्या 05/2021) को प्रकाशित करती है, जो केन्द्रीय सरकार को 17/10/2024 को प्राप्त हुआ था।

[सं. एल -22012/7/2021-आई.आर. (सी.एम-II)]

मणिकंदन.एन, उप निदेशक

New Delhi, the 21st October, 2024

**S.O. 2004.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award ( **Reference.I.D.No.05/2021**) of the **Central Government Industrial Tribunal-cum-Labour Court, Asansol** as shown in the Annexure, in the industrial dispute between the Management of **E.C.L.** and their workmen, received by the Central Government on **17/10/2024**.

[No. L-22012/7/2021 – IR (CM-II)]

MANIKANDAN. N, Dy. Director

**ANNEXURE**

**BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL -CUM- LABOUR COURT,  
ASANSOL.**

**PRESENT:** Shri Ananda Kumar Mukherjee,  
Presiding Officer,  
C.G.I.T-cum-L.C., Asansol.

**REFERENCE CASE NO. 05 OF 2021**

**PARTIES:**

Dipak Bouri

**Vs.**

Management of Chapui Khas Colliery of ECL

**REPRESENTATIVES:**

For the Union/Workman: Mr. Chandi Banerjee, General Secretary, CMU (INTUC).

For the Management of ECL: Mr. P. K. Das, Advocate.

**INDUSTRY:** Coal**STATE:** West Bengal.**Dated:** 02.09.2024**A W A R D**

In exercise of powers conferred under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Government of India through the Ministry of Labour, vide its Order **No. L-22012/7/2021-IR(CM-II)** dated 19.04.2021 has been pleased to refer the following dispute between the employer, that is the Management of Chapui Khas Colliery under Satgram Area of Eastern Coalfields Limited and their workman for adjudication by this Tribunal.

**SCHEDULE**

*“Whether the action of the Management of M/s Eastern Coalfields Ltd. in relation to its Chapui Khas Colliery under Satgram Area in denying the claim for regularization of Shri Dipak Bouri, UM No. 387401, as a Cap Lamp Charger is just and legal? If not, to what relief the said workman is entitled to? ”*

1. On receiving Order **No. L-22012/7/2021-IR(CM-II)** dated 19.04.2021 from the Government of India, Ministry of Labour, New Delhi for adjudication of the dispute, a **Reference case No. 05 of 2021** was registered on 17.06.2021 and an order was passed for issuing notice to the parties through registered post, directing them to appear and submit their written statements along with relevant documents in support of their claims and a list of witnesses.
2. The case is fixed up today for evidence of workman witness, in default the case is to be disposed of. Mr. P. K. Das, learned advocate for Eastern Coalfields Limited is present. On repeated calls at 12.10 pm none appeared for Dipak Bouri. Mr. Chandi Banerjee, union representative is found absent.
3. After registration of the case, Notice under registered post was issued to the concerned union as well as representative of the management. On 31.03.2023 workman appeared before the Tribunal but no written statement was filed. The case was fixed up for ex-parte hearing on 16.06.2023. On that date Mr. Chandi Banerjee, union representative appeared and filed written statement along with a prayer for vacating the ex-parte order. Management has already appeared and submitted their written statement. Case was then fixed up for evidence of workman witness on 21.11.2023, 26.04.2024 and 02.09.2024 i.e. today for the third time but workman has not appeared and no step has been taken by the union.
4. It appears to me that ample opportunity has been granted to the union and aggrieved workman, who has sought for regularization as Cap Lamp Charger at Chapui Khas Colliery. Since workman has not turned up on three consecutive dates, the Industrial Dispute stands dismissed for default. Let a No Dispute Award be drawn up.

Hence,

**O R D E R E D**

that a No Dispute Award be drawn up in the above Reference case. Let copies of the Award in duplicate be sent to the Ministry of Labour and Employment, Government of India, New Delhi for information and Notification.

ANANDA KUMAR MUKHERJEE, Presiding Officer

नई दिल्ली, 21 अक्टूबर, 2024

**का.आ. 2005.**—औद्योगिक विवाद अधिनियम 1947 (1947 का 14 ) की धारा 17 के अनुसरण में केन्द्रीय सरकार साउथ इंडियन बैंक लिमिटेड के प्रबंधन, संबंधित नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय कोलकता के पंचाट (16/2007) प्रकाशित करती है।

[सं. एल-12012/67/2007-आई.आर. (बी-1)]

सलोनी, उप निदेशक

New Delhi, the 21st October, 2024

**S.O. 2005.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.16/2007) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Kolkata* as shown in the Annexure, in the industrial dispute between the management of South Indian Bank Limited and their workmen.

[No. L-12012/67/2007– IR (B-I)]

SALONI, Dy. Director

**ANNEXURE****CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA****Present : Justice K. D. Bhutia, Presiding Officer.****REF. NO. 16 OF 2007****Parties :** Employers in relation to the management of**South Indian Bank Limited****AND****Their Workman**

Appearance :

On behalf of South Indian Bank: Ms. Ruchita Sharma, Ld. Advocate.

On behalf of the Workman: Mr.Suvodip Bhattacharjee ,

Ld. Advocate.

**Dated: 4<sup>th</sup> September, 2024****AWARD**

By order No. L-12012/67/2007 –IR(B-I) dated 02-07-2007, the Central Government, Ministry of Labour in exercise of power conferred u/s 10 (1) (d) and sub-section (2A) of Industrial Dispute Act, 1947 has referred the following disputes to this Tribunal for adjudication:-

“Whether the action of the management of South Indian Bank Limited in dismissing Sri Subrata Kumar Pal, ex-Peon from the service of the Bank w.e.f. 29-09-1999 is legal and justified? If not, to what relief the workman concerned is entitled?”

Before such issue was finally decided, the issue with regard to the legality and validity of departmental enquiry was decided as a preliminary issue in view of introduction of section 11-A of the I.D. Act, vide passing a preliminary order dated 24-04-2024, whereby the departmental enquiry held against the concerned workman to be valid and legal.

Therefore, now the question that need to be decided is whether the management of Bank is justified in dismissing the workman from service of Peon for his habitual absenteeism and such punishment is proportionate to the proved guilty?

To decide such issue the background of the case need to be discussed in gist. That the concerned workman was a permanent subordinate staff in the category of Peon of South Indian Bank.

It is the case of the concerned workman that he was suffering from mental illness and other various ailments and for which he could not attend the duty or inform the authority about his inability to attend the duty. However, the management of the bank without considering his such illness show caused him for unauthorised absent from duty and without properly considering his explanation supported by medical documents, he was charge sheeted for habitual absenteeism and initiated a departmental enquiry on such charge.

The management of the bank held the enquiry in his absence and without giving him any opportunity to produce evidence in his defence. The Enquiry Officer conducted the enquiry in a bias and discriminatory manner. The Enquiry Officer did not take into consideration the leave applications filed by him before holding him guilty of unauthorised absenteeism. That punishment of dismissal of service on the basis of defective enquiry and minor offence like absenteeism is illegal and disproportionate to the alleged offence thereby he has prayed for setting aside the order of dismissal dt. 29-09-1999 and for his reinstatement with consequential benefits.



On the other hand, the South Indian Bank in its written statement has alleged that the concerned workman was charge sheeted for his unauthorised absence and for his habitual absenteeism from duty not only once but on several occasions. That in earlier occasion he was found guilty of committing similar misconduct and as a punishment two future increment with cumulative effect was stopped on the basis of three other charge sheets. Despite such punishment the concerned workman did not rectify himself and improved himself rather he continued with his habit of remaining absent from duty without prior intimation or prior sanction of leave with the same habit of filing leave application only after availing unauthorised leave and on his return from unauthorised leave.

The management charge sheeted the concerned workman on 05-01-1998 for remaining absent for 72 days on different dates in the year 1996 and 100 days on different dates till 27-08-1997 and he did not report for duty from 02-09-1997 onwards in violation of leave rules of the bank endangering the discipline of fellow employees and prejudicial to the interest of the bank.

He was further charge sheeted on 22-12-1998 for remaining absent from duty without any leave from 10-08-1998 onwards and for remaining absent without intimation continuously for a period exceeding 30 days.

It has been contended by the bank before charge sheeting the concerned workman for the misconduct of habitual absenteeism several show causes notices were issued to him but his explanation for repeated misconduct being not satisfactory the management decided to conduct enquiry on the charge. It has also been alleged that for committing similar misconduct on earlier occasions his two future increment with cumulative effect was stopped. The absence without leave may be minor misconduct but habit of doing such act despite previous punishment converts the misconduct of habitual absenteeism into a major misconduct. The delinquent workman was in habit of submitting leave application subsequent to his joining the duty after absence.

Therefore, the order of dismissal of workman from the service of Peon was passed for habitual misconduct of unauthorised absenteeism on 29-09-1999 after holding due enquiry.

From the above contention of the parties it appears the ground of dismissal of the concerned workman from the service of Peon of the bank was due to his habitual absenteeism on the ground of illness both physically and mentally.

Unfortunately, the delinquent workman has failed to produce medical treatment papers to prove that he was/ is suffering from Asthenia and from mental illness and which prevented him to attend the duty from 02-09-1997 onwards and also from 10-08-1998 onwards before the Tribunal to justify his unauthorised absence from duty for months and days together.

That apart, the workman in para 3 of his evidence in chief on affidavit has admitted that he was served with a charge sheet dt. 05-01-1998 and 22-12-1998 for remaining absent from duty without leave starting from 20-04-1996 on several different dates due to his serious illness from neuro and other physical ailments and for which he could not keep normal attendance in office.

Unfortunately, no medical papers issued by any Neuro Physician or Neurologist has been filed by the workman to corroborate what he has stated in para 3 of his evidence in chief.

Copies of five leave applications (Exb.W-8 Collectively) and 12 copies of medical certificates (Exb. W-9 collectively) i.e. the medical certificate dated 13-05-1996, 28-05-1996, 10-06-1996, 22-06-1996, 13-07-1996, 04-09-1996, 12-12-1996, 18-01-1997, 09-02-1997, 20-03-1997, 24-03-1997, 26-04-1997, 13-05-1997 and 16-06-1997 filed by him along with leave applications show that all those medical certificates were issued by Homeopath Doctor P.C. Biswas and which show that the delinquent workman was either suffering from fever, cold and diarrhoea and not from any neuro problem, mental illness and asthenia as alleged by the workman. Further, those medical certificates were not supported by any prescriptions and cash memo or vouchers of purchase of prescribed medicines for treatment of fever, cold and diarrhoea. The leave applications itself prove that delinquent workman used to submit leave application with medical certificate after availing unauthorised leave and on joining the duty.

Further, he during his cross examination by the bank on oath on 18-03-2019, has admitted that he was absent from duty for a long time and he did not file any medical paper in support of his mental fitness to join the duty.

Be that as it may Exhibit-W-3 and Exhibit-W-5 prima facie shows that delinquent workman was served with the charge sheet dated 05-01-1998 on the misconduct of remaining absent 72 days on different dates in the year 1996 and for 100 days till 27-08-1997 and for absenting from duty without leave continuously from 02-09-1997 onwards in violation of the leave rules of the bank endangering the discipline of fellow employees and prejudicial to the interest of the bank. That he was directed to submit his explanation in writing within 7 days why no disciplinary action should be taken against him for his habitual unauthorised absenteeism.

Exhiit-W-5 shows that delinquent workman was served with another charge sheet dated 22-12-1998 for remaining on unauthorised absent from duty without leave and without intimation for a period exceeding 30 days i.e. from 10-08-1998 onwards till 22-12-1998.

Further, Management witness Sri Vasantha Kumar, Manager, Brabourne Road in his evidence has stated that the delinquent workman Sri Subrata Kumar Pal who joined the service as a Peon on 30-06-1992 was irregular in attending his duty and used to remain absent without giving leave application and he stated that the concerned workman was absent for 72 days on different dates in the year 1996 and for 100 days in 1997. He has also stated that delinquent workman was on continuous absent from duty on and from 02-09-1997 to 13-05-1998. He has also stated that the leave application used to be filed by the workman only after joining duty from absence and his such applications were supported by medical certificates. That service record of workman shows that he was show caused by the management of the bank for his insubordination conduct by leaving the place of work on 01-08-1995 at 3-30 p.m. without any prior permission of the superior and refusing to obey the instructions given by the Branch Manager on 02-08-1995. Further, he was show caused on 05-12-1995, 22-04-1996, for remaining on unauthorised absent from the duty without any leave on different dates in the month of October, 1995 and November, 1995 and for insubordination. The workman was found guilty of the charges on 30-12-1997 and for which his two future increment with cumulative effect was stopped as punishment.

M.W.1 has also stated that the bank had issued a notice dt.03-08-1998 and 27-08-1998 upon the delinquent workman for his unauthorised absence from 10-08-1998. That attendance register proves the delinquent workman was absent from duty on and from 10-08-1998 to 08-01-1999. That he received the leave application for 152 days from 10-08-1998 to 08-01-1999 from the workman only on 09-01-1999. That employees absent without any information will affect the general functions of the branch and the customer service of the branch. If a staff keep absenting on and off it will have effect on general discipline of the bank.

He has also stated that vide letter dt. 30-12-1997 disciplinary authority awarded punishment to the delinquent workman for previous three charge sheets. He has also produced bipartite settlement dt.19-10-1966 and read out page no.15 relating to unauthorised absent for a period exceeding 30 days.

That apart, the circular dt.27-12-1989 produced by the management shows that leave of all kinds cannot be claimed as of right and no leave or extension of leave shall be deemed to have been granted unless an order to that effect is passed and communicated to the employee concerned. An employee who over stays his leave shall not be eligible for his pay and allowance for the period of over stay and shall further render himself liable to such disciplinary action as the management may think fit to impose.

An employee who desires to obtain leave of absence shall apply in writing to the principal officer of the branch/department. Privilege leave applications shall be made not less than one month before the date from which the leave is to commence, except in urgent or unforeseen circumstances including illness when it is not possible to do. If the leave has not been applied for earlier, the leave application should be submitted on the date of commencement of leave in all other cases. Before proceeding on leave the employee inform the principal officer of the branch/department, his address while on leave.

In the case of employees who avail themselves of extraordinary leave exceeding the limit of extraordinary leave set out under the bipartite settlement, the bank can terminate their service as they are in breach of contract of their services. Further, an employee cannot avail extraordinary leave on his own and it is subject to sanction by the management.

The appointment letter of the concerned workman dt.20-07-1992 bearing signature of the workman, shows that he had agreed to be bound by the Service Rules of the bank.

That from the Head Officer circular dt.27-12-1989 regarding general rules of leave it appears leave application is mandatory and should be filed at the branch at least on the date of availing leave and such leave has to be sanctioned prior to availing the same but the delinquent workman had submitted leave applications only after availing the leave. That extraordinary leave can be taken for maximum period of three months but the delinquent workman absent for more than three months at a stretch and that too without any intimation or without proper application or without any sanction of leave.

In view of the above this Tribunal holds the management is justified in terminating/ dismissing Sri Subrata Kumar Pal, Ex-Peon from the service of the bank w.e.f. 29-09-1999 and who was found guilty of misconduct of absenteeism in different departmental enquiries conducted against him. It appears even after being punished on the earlier occasion with stoppage of two future increment with cumulative effect the workman did not bother to rectify himself rather it appears he continued to commit the same misconduct. Such conduct of the workman shows his no care attitude to the decision of the management of the bank and primarily towards the service rules applicable to him.

Therefore, this Tribunal holds if such workman is reinstated in service or is granted compensation it would leave wrong impression on the other co-workers and they may be encouraged to violate the service rules and may put the administration of the bank in hardship in running the bank with shortage of staff and there is every possibility of encouragement of indiscipline amongst the staff of the bank. Thus, this Tribunal does not find any reason to interfere with the finding of the Enquiry Officer and the decision of the disciplinary authority to dismiss the service of the concerned workman. Having regards to the no care attitude of the concerned workman to the service rules and to the

previous punishment for same misconduct, the dismissal of the workman does not appear to be disproportionate to the proved misconduct.

That apart, it is settled proposition of law if the findings of the Enquiry Officer in his report is supported by some evidence, it is not the function of the court to review it and come to its own independent finding. The Enquiring authority is the sole judge of the fact so long as there is some legal evidence to substantiate the finding. It is not open to the Tribunal and Courts to substitute their subjective opinion in the place of legitimate conclusion arrived at by the domestic enquiry based on evidence produced on the side of the management and which cannot be discarded by the Tribunal on the ground on the absence of independent evidence.

Accordingly, Reference Case no. 16 of 2007 is dismissed and order of termination of the service of the workman Sri Subrata Pal, Peon of South Indian Bank w.e.f. 29-09-1999 is hereby affirmed. An award to that effect is passed. Let the preliminary order dt. 24-04-2024 do form a part of this final award.

Justice K. D. BHUTIA, Presiding Officer

नई दिल्ली, 21 अक्टूबर, 2024

**का.आ. 2006.**—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बंगीय ग्रामीण विकास बैंक के प्रबंधन, संबंधित नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय कोलकता के पंचाट (04/2018) प्रकाशित करती है।

[सं. एल-12025/01/2024-आई.आर.(बी-1)-228]

सलोनी, उप निदेशक

New Delhi, the 21st October, 2024

**S.O. 2006.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.04/2018) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Kolkata* as shown in the Annexure, in the industrial dispute between the management of Bangiya Gramin Vikash Bank and their workmen.

[No. L-12025/01/2024-I.R. (B-I)-228]

SALONI, Dy. Director

#### ANNEXURE

#### CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Present : Justice K. D. Bhutia, Presiding Officer.

CGIT-04 OF 2018

Shri Prodyut Naskar ..... Applicant/Employee

Versus

Bangiya Gramin Vikash Bank ... Opp. Party/Employer

Appearance :

On behalf of the Appellant/Employee: Sk. Hamedul Quader,

Ld. Advocate.

On behalf of Opp. Party/Employer: Absent.

Date: 3<sup>rd</sup> September, 2024

#### A W A R D

The workman Sri Prodyut Naskar in fact appears to have filed the present case u/ 2-A of the I.D. Act challenging his termination/ dismissal from the service of a Clerk-cum-Cashier of Bangiya Gramin Vikash Bank, Sonakhali Branch, Paschim Medinipur on 13-02-2015, but wrongly quoted as a case under section 10 (2A) (2) of the I.D. Act in the application filed by him.

Such case filed by the concerned workman was preliminarily heard on the issue of validity of domestic enquiry on the basis of which the service of the concerned workman was terminated.

The Tribunal vide order dt. 25<sup>th</sup> June, 2024 has upheld the exparte domestic enquiry held against the concerned workman by the management of the bank for his misconduct for committing acts detrimental to the interest of the bank and its reputation i.e. by wrongfully removing At Par cheque no. 006347 on 04-09-2009 from the almirah, the key of which was handed to him by the Branch Manager on good faith and converting the said cheque for Rs.60,00,000/- for his own personal wrongful gain and making an attempt to encash the said cheque at Axis Bank, Jajpur Road Branch, Orissa, on 17-09-2009 in connivance with other local persons of Jajpur, Orissa to be just, proper and valid or legal.

Therefore, in view of provisions of section 11-A of the I.D. Act, at present, the Tribunal has to decide whether the punishment of termination of service of the concerned workman by the Bank is proportionate to the proved misconduct or not?

For adjudication of such issue, facts of the case in gist are that delinquent employee Sri Pradyut Naskar was appointed by the then Mallabhum Gramin Bank, having head office at Bankura as a Junior Clerk cum Cashier on 17-05-1988 and he joined at Regional Office at Deulia Bazar, Medinipur on 28-05-1988. That he rendered unblemished service to the bank and as such he was transferred to Sonakhali Branch w.e.f. 08-12-2004.

That he being an employee of the bank was well aware of an agreement between Axis Bank and Bangiya Gramin Vikash Bank and by virtue of which all branches of Bangiya Gramin Vikash Bank under Paschim Medinipur Regional Office, used to issue "At Par Cheque" on the account maintained by their Nodal Branch i.e. Medinipur Branch with Axis Bank, Medinipur.

That on 17-09-2009 Axis Bank, Jajpur Road Branch, Orissa sought confirmation from Bangiya Gramin Vikash Bank, Medinipur Branch through Axis Bank, Medinipur, with regard to issuance of a banker's cheque bearing no. 006347 dt. 04-09-2009 for Rs.60,00,000/- under single signature by Bangiya Gramin Vikash Bank, Sonakhali Branch with Rubber Stamp having no digital punching thereon and deposited by one Sri Sribatsa Panda in his Saving A/c. bearing no. 501010100021988 with Axis Bank, Jajpur Road Branch, Orissa for clearance.

That concerned branch Bangiya Gramin Vikash Bank, Sonkhali Branch immediately informed the concerned authorities for stoppage of payment of alleged high value banker's cheque/ D.D. and same to be a forged one with forged signature and not being issued by it. Accordingly, Bangiya Gramin Vikash Bank, Sonkhali Branch lodged FIR with Daspur Police Station, Paschim Medinipur regarding missing of the "At Par Cheque Leaf" from the Almirah of the Bank, the key of which used to be in the custody of delinquent workman on 18-09-2009.

The delinquent employee was on medical leave on 15-09-2009 and he was arrested by Orissa Police on 18-09-2009. That he was placed under suspension by the bank on 30-09-2009 with contemplation of disciplinary action against him. That he was granted bail by Orissa High Court on 21-10-2009.

Further, Axis Bank, Jajpur Road Branch had informed the concerned bank that one Sri Bibhuti Bhusan Baliai Singh, an existing customer of the Axis Bank had asked Rashid Khan, Business Development Executive of Axis Bank to visit Panchali Hotel, Jajpur Road with a proposal to assist for encashment of instrument for Rs.60,00,000/- without disclosing the name of the payee. That Jajpur Road Police Station seized copy of I.D. Card of delinquent workman from Panchali Hotel on 17-09-2009. That police of Jajpur P.S. arrested the delinquent workman along with Sri Sribatsa Panda, Sri Surya Bal, Sri Promod Mahapatra and others on 18-09-2009. That Jajpur P.S. submitted a charge sheet u/s 467, 468, 471, 420, 417,120(b), 511 and 34 IPC on 31-12-2010.

That delinquent workman being a Clerk cum Cashier of the bank had stolen a leaf of At Par Cheque no. 006347 of Axis Bank to issue as Demand Draft from the almirah of the bank, the key of which was handed over by the Manager on good faith. That before misusing such stolen at par cheque, he had purchased a Demand Draft of Rs.100/- in favour of CMC, Vellore, payable at Vellore on the same day i.e. on 04-09-2009 being no. 006336.

The management almost five years of placing him under suspension issued charge sheet dt. 18-09-2014 for committing misconduct in violation of Regulation 18 and 20 of Bangiya Gramin Vikash Bank (Officers and Employees) Service Regulations, 2010 read with Bangiya Gramin Vikash Service (Amendment) Regulations, 2013 i.e. attempt to commit criminal offence and committing acts detrimental to the interest of the bank and its reputation after obtaining necessary advice from Chief Vigilance Officer of U.B.I. (sponsored bank) on 09-09-2014..

That he was served with charge sheet. He submitted his reply on 10-10-2014, but management not being satisfied with his explanation held domestic enquiry on the charge and issued a notice to that effect to him. That domestic enquiry was held exparte as the workman never attended the hearing by taking plea of ill health. However, he had moved the Hon'ble High Court for quashing the domestic enquiry including charge sheet dt.18-09-2014 by filing writ petition no. 32387 of 2014. The Hon'ble High Court disposed of the writ petition on 12-12-2014 granting him to file his reply by 29-12-2014 as the documents on which the management had placed reliance in the domestic enquiry were supplied to him on 09-12-2014. Accordingly, as per the directions of the Hon'ble High Court he submitted his representation before the Enquiry Officer on 29-12-2014. The enquiry officer in his report dt. 03-01-2015 held him guilty of charge taking into consideration both oral and documentary evidence adduced by the management. Accepting the report of E.O. the management issued a show cause notice on 13-01-2015 along with copy of report of the Enquiry Officer dt. 03-01-2015 to the workman. Who submitted his representation against the

enquiry report before the disciplinary authority on 21-01-2015. That management not being satisfied with his explanation proposed to dismiss him from the service by issuing a letter dt. 02-02-2015 and directed him to appear for personal hearing on 13-02-2015. But he failed to appear and dismissed him from the service w.e.f. 13-02-2015.

That he preferred an appeal against the order of dismissal from service before the Appellate Authority and who too dismissed his appeal. Then he raised a dispute before the Labour Commissioner and who too could not resolve his dispute and as such he moved this Tribunal challenging his illegal termination and prayed for his reinstatement in service with full back wages.

However, the management of the bank failed to pursue with the case after the case was fixed for evidence from the side of the workman i.e. since 2019, but in view of provisions of Rule 22 of Industrial Disputes (Central) Rules, 1957 the present case has been proceeded against the management of the bank as if it had duly attended or had been represented.

The workman too has failed to appear in person to depose before the tribunal on the ground of his ill health and as such his exparte evidence was recorded on commission by Ld. Advocate Mr. Sharma.

Admittedly, the concerned workman was a Clerk cum Cashier posted at Bangiya Gramin Vikash Bank, Sonakhali Branch at the time of his suspension on 30-09-2009. It is also admitted fact the concerned workman last attended the duty on 14-09-2009 and he was on medical leave on 15-09-2009 and thereafter he did not attend the duty.

From para 4 (four) of the copy of writ petition 32387(W) of 2014 filed before the Hon'ble High Court on 04-12-2014 by the workman for quashing of departmental enquiry and charge sheet has admitted that he was arrested from Panchali Hotel along with other suspects on 18-09-2009. He was released on bail on 21-10-2010 by the Hon'ble High Court of Orissa. Arrest of the workman in the State of Orissa on 18-09-09 prove the ground of absence of the delinquent from duty on 15-09-2009 due to illness to be doubtful and false.

Further, from the copy of FIR lodged by the Asst. Vice President and Branch Head of Axis Bank, Jajpur Road Branch to the I.C., Jajpur P.S. on 17-09-2009 at around 10-40 p.m. lying in the list of documents filed by Bank shows that on 17-09-2009 around 11-30 a.m. to 12-00 noon one of its bank customer named Sribatsa Panda had deposited a draft of Bangiya Gramin Vikash Bank, Medinipur Branch drawn on Axis Bank, Jajpur bearing no. 006347 dt.04-09-2009 for Rs.60,00,000/- in his name. The draft was issued under single signature with a rubber stamp "issued under single signature" and without digital punching (a kind of security feature). Then and there, the bank sought confirmation from Bangiya Gramin Vikash Bank, Medinipur through its branch at Medinipur, as the draft was of high value. That Bangiya Gramin Vikash Bank, Medinipur confirmed non-issuance of any such draft.

Further, that Sribatsa Panda had visited the branch around 11-00 a.m. to enquire about the tax implication of deposit of big amount in his personal account. Then he was asked to produce the draft but he left the branch to bring the draft.

It further discloses that around 10-30 a.m. one Sri Suresh Bal had visited the branch with an query regarding deposit of high value cheque and on being asked to produce the cheque he too left the branch.

It further discloses that on 16-09-2009 at around 10-30 a.m. one Sri Bibhuti Bhusan Baliarsingh, existing customer of Axis Bank, Jajpur Road Branch, called Sri Rashid Khan, its Business Development Executive to his office for the purpose of opening of some new accounts. That Mr.Rashid Khan was taken to Hotel Panchali located at Jajpur Road and introduced with some new clients and one middle aged person convinced him to assist him in withdrawing Rs.60,00,000/- through cheque without disclosing his name. That on the same date around 5 p.m. to 6 p.m. Sri Bibhuti Bhusan Baliarsingh made similar query about tax implication on deposit of high value instrument without producing the same.

That copy of FIR lodged by the Manager, Bangiya Gramin Vikash Bank, Sonakhali Branch before Daspur P.S., Paschim Medinipur on 18-09-2009 discloses that on 04-09-2009 the concerned workman had purchased one D.D. of Rs.100/- in favour of CMC, Vellore. That Sri Pradyut Naskar, the concerned workman used to handle the keys of the Almirah where At Par Cheques of Axis Bank to issue as Demand Draft were kept. That on 17-09-2009 around 2-00 to 3-00 p.m. while the concerned Manager was in meeting at Medinipur Zilla Parishad, the Regional Manager, Bangiya Gramin Vikash Bank, Medinipur, enquired him over phone about issuance of At Par Cheque dated 04-09-2009 amounting to Rs.60,00,000/- from his branch. That he immediately informed that no such cheque was issued from his branch. Then, the Manager, Axis Bank, Medinipur informed the Manager, Axis Bank, Jajpur Branch, to stop payment of disputed cheque bearing forged signature and to detain the culprits and one of them was Sri Pradyut Naskar, one of its staff, who tried to misappropriate huge amount of money by forging the signature on the disputed instrument with the one appearing in the D.D. of Rs.100/- bought by him on 04-09-2009.

From the copy of charge sheet dt. 31-12-2010 filed by Jajpur P.S. u/s 467, 468, 471, 420, 120 (b), 511 and 24 IPC, it appears Jajpur P.S. started case no. 160 of 2009 dt. 17-09-2009 u/s 467, 468, 471, 420, 120 (b), 511 and 24 IPC and arrested Sri Pradyut Naskar, a Clerk cum Cashier of Bangiya Gramin Vikash Bank, Sonakhali Branch, Dist. West Medinipur on 18-09-2009 at 5-00 p.m. along with Sri Sribatsa Panda, a man of Mahatap Nagar, Jajpur, Orissa, Sri Suresh Bal of Jhatiasahi, Jajpur, Orissa and Sri Promod Mahato of Jaintara, Jajpur, Orissa. The other co-accused Sri

Bibhuti Baliarsingh of Taharpur, Jajpur, Orissa and Sri Sukumar Das of Tamluk, Purba Medinipur were shown absconding.

The list of witnesses includes names of Rashid Khan, Business Development Executive of Axis Bank and Sri Amar Kumar Patra, the concerned Manager of Bangiya Gramin Vikash Bank, Sonakhali Branch, Dist. West Medinipur and Sri Nilkantha Mishra, the then concerned Manager, Axis Bank, Jajpur Branch along with other witnesses.

Thus, from the above documents as well as admission made by the concerned workman in para 4 of the writ petition filed by him before the Hon'ble High Court, Calcutta, it appears that concerned workman who was absent from duty from 15-09-2009 onwards and was arrested from Panchali Hotel, Jajpur Road, Orissa by Police of Jajpur P.S. on 18-09-2009 and seizure of his Identity Card by the police from the Hotel Panchali, leaves no room for doubt about the involvement of the concerned workman in the organized crime of defrauding Bangiya Gramin Vikash Bank, Sonakhali Branch where he was working as a Clerk cum Cashier and Axis Bank, Jajpur Branch, Orissa in conspiracy or in connivance with Sri Bibhuti Bhusan Baliarsingh, existing customer of Axis Bank, Jajpur Branch, Orissa and other local people of Jajpur, Orissa.

That his presence at Jajpur Panchali Hotel on 15-09-2009 was discovered by the Investigating Officer of Jajpur P.S. who had seized the I.D. Card of the concerned workman from the hotel Panchali and where he was checked in Room no.208 on 15-09-2009.

That apart, purchasing At Par Cheque no.006336 dt.04-09-2009 for Rs.100/- in favour of CMC, Vellore payable at Vellore by concerned workman on 04-09-2009, leaves no room for doubt that he made purchase of draft of Rs.100/- just to forge the signature of Branch Manager appearing on the same on the disputed 'At Par Cheque' of Axis Bank Ltd., Medinipur, West Bengal bearing no. 006347 dt.04-09-2009 for Rs.60,00,000/- drawn in favour of Sri Sribatsa Panda, payable At Par Axis Bank, Jajpur Branch. Such fact further corroborate the allegation of the bank that Clerk cum Cashier Sri Naskar, taking advantage of trust reposed upon him by the Branch Manager with keys of the almirah where "at par cheque" of Axis Bank used as Demand Draft were kept, appears to have illegally removed the At Par Cheque no. 006347 on 04-09-2009, the day he had purchased a draft of Rs.100/- in favour of CMC, Vellore and forged the signature of Manager, Sri Amar Kumar Patra to make wrongful gain of Rs.60,00,000/- in connivance with other local persons of Jajpur, Orissa namely Sri Suresh Bal, Sri Promod Mahapatra, Sri Bibhuti Baliarsingh and one Sri Sukumar Das of Tamluk, Medinipur. That with the help of Sri Sribatsa Panda of Jajpur and tried to defraud the bank by using the forged At Par Cheque/ Draft of Rs.60,00,000/-.

It is true that the banks did not suffer any financial loss, but there was an attempt to commit criminal offense with an intention to defraud the bank. Such conduct on the part of concerned workman not only appears to be grave in nature but also in violation of Regulation 18 & 20 of Bangiya Gramin Vikash Bank (Officers & Employees) Service Regulations, 2010 read with Bangiya Gramin Vikash Bank Service (Amendment) Regulation, 2013 i.e. moral guilty for attempt to commit criminal offence or for committing acts detrimental to the interest of the bank and its reputation.

Further, the order passed by the Hon'ble High Court in writ petition prima facie shows that Hon'ble High Court declined to interfere with the domestic enquiry conducted against the concerned workman, rather directed the management to proceed with the domestic enquiry as per law and also declined to quash the charge sheet and domestic enquiry as prayed by the concerned workman.

From the discussion made above and considering the gravity of misconduct proved against the workman in the departmental enquiry this Tribunal is of view the management of the Bank is justified in terminating the concerned workman from the service of the Clerk cum Cashier w.e.f. 13-02-2015.

That apart, it is settled proposition of law if the findings of the Enquiry Officer in his report is supported by some evidence, it is not the function of the court to review it and come to its own independent finding. The Enquiring authority is the sole judge of the fact so long as there is some legal evidence to substantiate the finding. It is not open to the Tribunal and Courts to substitute their subjective opinion in the place of legitimate conclusion arrived at by the domestic enquiry based on evidence produced on the side of the management and which cannot be discarded by the Tribunal on the ground on the absence of independent evidence.

Accordingly, CGIT-04 of 2018 u/s 2A of I.D. Act is dismissed and order of termination of the service of the workman Sri Prodyut Naskar as Clerk cum Cashier of Bangiya Gramin Vikash Bank w.e.f. 13-02-2015 is hereby affirmed. An award to that effect is passed. Let the preliminary order dt. 25-06-2024 do form a part of this final award.

Justice K. D. BHUTIA, Presiding Officer

नई दिल्ली, 21 अक्टूबर, 2024

**का.आ. 2007.**—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स ब्रेथवेट एंड कंपनी लिमिटेड और मैसर्स एनसीमित .फोर्जिंग प्रा .एफ. के प्रबंधन,संबद्ध नियोजको और

उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय कोलकता के पंचाट (01/2018) प्रकाशित करती है।

[सं. एल-12025/01/2024-आई.आर. (बी-1)-229]

सलोनी, उप निदेशक

New Delhi, the 21st October, 2024

**S.O. 2007.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.01/2018) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Kolkata* as shown in the Annexure, in the industrial dispute between the management of M/s Braithwaite & Co. Ltd and M/s N.F. Forging Pvt. Limited and their workmen.

[No. L-12025/01/2024- IR (B-I)-229]

SALONI, Dy. Director

**ANNEXURE  
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA**

**Present : Justice K. D. Bhutia, Presiding Officer.**

**CGIT -01 OF 2018**

**Parties : Rajendra Singh**

**Versus**

- 1. M/s. Braithwaite & Co. Ltd. and**
- 2. M/s. N. F. Forging Pvt. Limited.**

Appearance:

On behalf of Rajendra Singh: Absent.

On behalf of M/s. Braithwaite & Co. Ltd.: Mr. Debaink Banerjee, Ld. Advocate.

On behalf of M/s. N. F. Forging Pvt. Limited. : Absent.

**Dated: 04<sup>th</sup> September, 2024**

**A W A R D**

Today has been fixed for evidence from the side of workman as last chance and in default, “no dispute award”. Unfortunately, today too like on previous two consecutive occasions the workman and his Ld. Counsel are found absent when the matter is called.

That apart, record shows the present case is pending for evidence of workman since 30-08-2023 but all along Ld. Counsel appearing for workman had sought time on one excuse or the other.

As per application u/s 2-A of the I.D. Act, filed by the workman he has sought that he may be allowed to join his duty or resume his usual duties on usual terms and conditions and for payment of all his dues on and from 04-12-2005 till the date of passing of the award and to give direction to his immediate employer M/s. N.F. Forging Pvt. Ltd. to issue proper appointment letter w.e.f. 01-04-1998.

That as per the application u/s 2-A filed by the workman, it appears the concerned workman was engaged by different contractors and lastly by M/s. N. F. Forging Pvt. Ltd. of M/s. Braithwaite & Co. Ltd. to work in the establishment of the latter w.e.f. 01-04-1998. That he was discharging his duty sincerely without any complaint but all on a sudden he was prevented to enter into the establishment of the principal employer w.e.f. 04-12-2015.

That he was not served with any notice of retrenchment by his immediate employer or paid any retrenchment compensation as provided under Act of 1947. That he was not placed under suspension by his immediate employer. Therefore, he has alleged that preventing him to enter into the establishment of the principal employer tantamount to illegal retrenchment or illegal denial of service. That he made representation before both the employers but of no

avail. He raised an industrial dispute before the Labour Commission and which resulted in failure. Thus, he was compelled to file the present case before this Tribunal.

Record shows the contractor employer had put appearance but failed to pursue with the case and as such it was proceeded ex parte.

The principal employer has contested the claim of the workman and in its W.S. it has been alleged that it being a company under the management of Indian Railways, it engages different contractors for different projects. Those contractors engage workers under their direct pay roll and as such the concerned workman being an employee of one of its contractors that there exists no relationship of employer-employee between it and the concerned workman. The concerned workman not being its employee no industrial disputes lies against it.

However, it has alleged that the concerned workman being an unruly workman had stopped attending his duty and he was never denied any permission. Therefore, it has prayed for dismissal of the case against it.

But, there is no evidence whatsoever in the record to substantiate the content of claim statement and prove the case of alleged illegal retrenchment/ termination/ dismissal of the concerned workman from the service by the concerned contractor employer M/s. N. F. Forging Pvt. Ltd. w.e.f. 04-12-2015 and that too without complying the provisions as laid down in the Act of 1947 with regard to retrenchment.

In view of above the Tribunal has no other option but to pass a “No Dispute Award”. Accordingly, CGIT-01/2018 is disposed of.

Justice K. D. BHUTIA, Presiding Officer

नई दिल्ली, 22 अक्टूबर, 2024

**का.आ. 2008.**—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधन, संबद्ध नियोजको और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय जबलपुर के पंचाट (29/2017) प्रकाशित करती है।

[सं. एल-12012/52/2016-आई.आर. (बी-1)]

सलोनी, उप निदेशक

New Delhi, the 22nd October, 2024

**S.O. 2008.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.29/2017) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Jabalpur* as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen.

[No. L-12012/52/2016- IR (B-I)]

SALONI, Dy. Director

#### ANNEXURE

#### THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

**NO. CGIT/LC/R/29/2017**

**Present: P.K.Srivastava**

**H.J.S..( Retd)**

**Prakash Das Dhananjay**

**S/o. Sumeri Das**

**R/o. Neelkanth Vihar Colony,**

**Near SP Bunglow, Mandla (M.P.)**

**Workman**

**Versus**

**The Branch Manager**



**State Bank of India,  
Civil Lines, Main Branch  
Mandla (M.P.)**

**Management**

### **A W A R D**

**(Passed on this 23<sup>rd</sup> day of September-2024.)**

As per letter dated 03/04/2017 by the Government of India, Ministry of Labour, New Delhi, the reference is made to this Tribunal under section-10 of I.D. Act, 1947 as per reference number L-12012/52/2016/IR(B-I) dt. 03/04/2017. The dispute under reference related to :-

***“Whether the services of Prakash Das Dhananjay, Peon (Daily Wager) by Dy. General Manager, SBI, Zonal Office Vijay Nagar, Jabalpur (MP), the Branch Manager, SBI, Civil Line, Main Branch Mandla, Distt. Mandla (MP) by way of verbal order dated 07.11.2012 is justified ? If not, what relief the applicant Sh. Prakash Das Dhananjay is entitled for ?”***

After registering the case on the basis of the reference received, Notices were sent to the parties and were duly served on them. They appeared and filed their respective statements of claim and defense.

**The case of the workman**, in short is that the workman was appointed as Peon in Civil Lines Branch of the then State Bank of Indore at Mandla on 22.12.1999, as a peon/messenger and worked continuously till 07.12.2012. Thereafter he was terminated without notice or wages in lieu of one month notice and without payment of retrenchment compensation, in violation of the provision of Section 25-F of the Industrial Disputes Act, 1947 (in short the Act, 1947). He had worked more than 240 days as required under Section 25-B of the Act, 1947. He worked for 240 days and more in every year continuously and has thus acquired the status of permanent employee. He was not paid wages in the light of Bipartite Settlement which he was entitled to. The management adopted unfair labour practice by continuing him as Badli worker for years and not regularizing him. He has further alleged that in the light of Judgment of Hon'ble Supreme Court in the case of Secretary, State of Karnataka Vs. Uma Devi, the management did not review the cases of casual workers who were working with management for more than ten years on the date of Judgment, thus committed illegality. He requested that holding his termination against law, he be held entitled to be reinstated with all back wages and benefits.

**The case of the management**, inter alia, is that the alleged workman was neither employed as permanent employee nor attained permanent status. He worked as a casual worker for few hours in a day as and when required in branch of the Bank and was paid for it. The provisions of the Section 25-F of the Act 1947 is not applicable and therefore, the question of giving notice or payment of retrenchment compensation does not arise. It has been further pleaded that the workman was a daily wager, engaged not on regular basis but subject to availability of work and also that he was not appointed against any sanctioned vacancy following recruitment process. It was also pleaded that since the engagement of the workman was on day to day basis, no formal appointment letter was required to be issued to him, also that no muster roll was required to be prepared in his case and he is not entitled to protection of Desai Award and Bipartite Settlement because he is not covered in these. Accordingly, management has prayed that the reference be answered against the workman.

The workman has filed his rejoinder in which he has mainly reiterated his allegations in his statement of claim. **In evidence**, the workman has filed his affidavit as his examination in chief, he has been cross examined by management. He has further filed and proved Ex. W/1 Experience Certificate issued by the Branch Manager, Ex. W/2 Statement regarding payment, Ex. W/3 application of the workman submitted in the Branch on 17.04.2010 and Ex. W/4 copy of list of workman filed by management before Assistant Labour Commissioner during conciliation proceedings.

Management has filed affidavit of its witness as his examination in chief, he has been cross examined by workman.

Workman filed an application on 27.07.2020 seeking direction to management to produce documents mentioned in application. This application was heard and decided vide order dated 29.12.2021, management was directed to file letter dated 24.12.2010 and forms of employee particulars dated 17.04.2010 as mentioned in para 1 of their reply to this application. In its objections on this application, management had taken a case that the documents no.- 1, 2 & 4 i.e., attendance register/muster roll, payment voucher, and bonus vouchers were not available with them. The workman was given opportunity to lead secondary evidence with respect to these documents. Management did not care even the documents, with respect to which management was directed to file nor did file any affidavit with regards to their non availability.

I have heard argument of Learned Counsel for workman Mr. Arun Patel and learned Counsel Mr. Vijay Tripathi for management. Both the sides have filed written arguments which are part of record. I have gone through the written arguments and the record as well.

On perusal of record in the light of rival arguments, following issues arise for determination :-

- 1) ***Whether, the workman has successfully proved his continuous engagement for 240 days in an year ?***
- 2) ***Whether, the disengagement of the workman is legal ?***
- 3) ***Whether, the workman is entitled to any benefit ?***

**Issue No.-1 :-**

Before, entering into any discussion, Section 25-B of the Act is being reproduced as follows :-

**25B. Definition of continuous service.—For the purposes of this Chapter,—**

*(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;*

*(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer—*

*(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than—*

*(i) one hundred and ninety days in the case of a workman employed below ground in a mine; and*

*(ii) two hundred and forty days, in any other case;*

*(b) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than—*

*(i) ninety-five days, in the case of a workman employed below ground in a mine; and*

*(ii) one hundred and twenty days, in any other case.*

*Explanation.—For the purposes of clause (2), the number of days on which a workman has actually worked under an employer shall include the days on which—*

*(i) he has been laid-off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946), or under this Act or under any other law applicable to the industrial establishment;*

*(ii) he has been on leave with full wages, earned in the previous years;*

*(iii) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and*

*(iv) in the case of a female, she has been on maternity leave; so, however, that the total period of such maternity leave does not exceed twelve weeks.*

The initial burden to prove this issue is on the workman. Pleadings of the parties on this issue have been elaborated earlier. The workman has corroborated his allegations in his statement of claim in his affidavit filed as his examination in chief. In his cross examination, he admits that he was paid bonus for the days he worked. He further states that he was not issued any appointment letter, his name not sponsored by employment exchange, he had directly applied in the Branch, he did not appear in any written examination. He has further stated in his affidavit that at the time of merge of State Bank of Indore in State Bank of India in the year 2010, a list of employees of State Bank of Indore sent to the State Bank of India which included his name also. He used to work as a peon, his job was record keeping, maintenance of vouchers etc. He is filed and proved documents as mentioned above to corroborate his allegations that he worked with the bank of State Bank of Indore and completed 240 days continuously in a year.

On the contrary, the management witness, who is an Officer of State Bank of India states that he was never posted in the state bank of Indore, there was no record available regarding the applicant workman. At present, these works are taken from persons engaged through outsourcing agencies.

The documents regarding bonus Ex. W/3, documents regarding payment of wages Ex. W/2 and Ex. W/4 the list of workers as well Ex. W/1 filed and proved by the workman, corroborates the case of the workman that he worked within the period.

Vide order dated 29.12.2021, after hearing the application of workman seeking direction to management to produce documents mentioned in the application as well written objection on application filed by management, it was directed to file two documents i.e. letter dated 24.12.2010 with list of casual employees submitted by management during conciliation proceedings and form of employee particulars dated 17.04.2010. Regarding other documents i.e. attendance register/muster roll, payments vouchers and bonus vouchers, management took a stand that these were not available with them. The management did not care to file the two documents which it was directed to file by the said order mentioned above. Learned Counsel for workman has submitted that adverse inference should be drawn against management.

Learned Counsel for management has referred to following judgments to support his argument that the burden is on workman to prove his claim that he worked continuously for 240 days in a year. These are :-

**Range Forest Officer Vs. S.T. Hadimani (2002) 3 SCC 25**

*This extract is taken from Range Forest Officer v. S.T. Hadimani, (2002) 3 SCC 25 : 2002 SCC (L&S) 367 : 2002 SCC OnLine SC 226 at page 26*

3. *For the view we are taking, it is not necessary to go into the question as to whether the appellant is an "industry" or not, though reliance is placed on the decision of this Court in State of Gujarat v. Pratamsingh Narsinh Parmar [(2001) 9 SCC 713 : 2002 SCC (L&S) 269 : JT (2001) 3 SC 326]. In our opinion the Tribunal was not right in placing the onus on the management without first determining on the basis of cogent evidence that the respondent had worked for more than 240 days in the year preceding his termination. It was the case of the claimant that he had so worked but this claim was denied by the appellant. It was then for the claimant to lead evidence to show that he had in fact worked for 240 days in the year preceding his termination. Filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any court or tribunal to come to the conclusion that a workman had, in fact, worked for 240 days in a year. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period was produced by the workman. On this ground alone, the award is liable to be set aside. However, Mr Hegde appearing for the Department states that the State is really interested in getting the law settled and the respondent will be given an employment on compassionate grounds on the same terms as he was allegedly engaged prior to his termination, within two months from today."*

**State of Uttarakhand v. Sureshwati, (2021) 3 SCC 108**

*This extract is taken from State of Uttarakhand v. Sureshwati, (2021) 3 SCC 108 : (2021) 1 SCC (L&S) 434 : 2021 SCC OnLine SC 34 at page 117*

"25. *On the basis of the evidence led before the Labour Court, we hold that the School has established that the respondent had abandoned her service in 1997, and had never reported back for work. The respondent has failed to discharge the onus to prove that she had worked for 240 days in the preceding 12 months prior to her alleged termination on 8-3-2006. The onus was entirely upon the employee to prove that she had worked continuously for 240 days in the twelve months preceding the date of her alleged termination on 8-3-2006, which she failed to discharge."*

Learned Counsel for workman has referred to following judgments in this respect :-

**Gauri Shankar Vs. State of Rajasthan, (2016) 1 SCC (L & S) 546-** Held that even if the burden of proof does not lie on a party the Court may draw and adverse inference if it withholds important documents in his possession which can throw light on facts at the issue. It was further observed that a practice has grown up in Indian procedure of those in possession of important documents or information lying by, trusting to abstract doctrine of onus of proof, and failing, accordingly, to furnish to, the Court the best material for its decision.

**Director, Fisheries, Terminal Division Vs. Bheekhu Bhai Meghaji Bhai Chawda, AIR 2010 SC 1236 Para 14** – Held that a Court of law even in a case where provisions of Indian Evidence Act apply, may presume or may not presume that if a party despite possession of best evidence has not produced, the same it would have gone against his contention. The matter however would be different where despite direction by a Court, the evidence is withheld.

Hence in the case in hand also, non production of the two documents referred above inspite of direction of this Tribunal to produced them will go against management that too when it is nowhere the case of management that these documents are not available with them.

In the light of above discussion and findings, the case of the workman that he worked continuously for 240 days in a year is held proved.

Issue No.-1 is answered accordingly.

**Issue No.-2 :-**

Before entering into any discussion on merit, Section 25-F & 25-G of the Act are being reproduced as follows :-

**25F. Conditions precedent to retrenchment of workmen.**— *No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until—*

- (a) *the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;*
- (b) *the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and*
- (c) *notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.*

**25G. Procedure for retrenchment.**— *Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman.*

Case of the workman is that he was not issued any notice of retrenchment nor was he paid compensation, which he has corroborated in his evidence. It is not the case of management that he was paid any compensation or given prior notice. Hence, termination of his services is held in violation of 25-F & 25-G of the Act and issue no.-2 is answered accordingly.

### **Issue No.-3 :-**

In the light of findings recorded above the question arises as to what relief the workman is entitled ?

Learned Counsel for workman has submitted that keeping in view the long tenure of the workman, he should be reinstated with back wages. He has referred to a Division Bench Judgment of Hon'ble High Court of M.P. passed in W.A. No.- 1431/2018 and other connected writ appeals, in which a Division Bench of Hon'ble High Court has approved the Award of this Tribunal passed in the case of RC/09/2012 and other connected references, holding the workman entitled to be reinstated with 50% of back wages with respect to the workman who had completed 10 years of continuous engagement with the then State Bank of Indore as daily wager and their termination was found in violation of the Act.

Learned Counsel for management has submitted that compensation may be in the interest of justice in the case in hand because the workman was not appointed against a sanctioned vacancy following recruitment procedure also that he has been in beneficial employment after termination of his services.

Management has referred to following judgments in their written argument :-

- 1) ***Jagbeer Singh Vs. Haryana State Marketing Board, (2009) 15 SCC 327*** – Held that when the workman spent total length of service from 01.09.1995 to 18.07.1996 compensation and not reinstatement would be proper remedy.
- 2) ***BSNL Vs. Man Singh, (2012) 1 SCC 558*** – Held that when it was proved that the workman had merely worked for more than 240 days compensation would meet ends of justice.
- 3) ***Rajasthan Development Corporation Vs. Gitam Singh, (2013) 5 SCC 136*** – Held that when the daily wager worked only for eight months from 01.03.1991 to 31.10.1991, compensation and not reinstatement would meet ends of justice.
- 4) ***Hindustan Machine Tools Vs. Ghanshyam Sharma, (2008) 18 SCC 80*** – Held that 50% as compensation would meet the ends of justice in the facts and circumstances of that case.

The cases referred can be distinguished on facts because the tenure of the workmen in the cases referred was very short, whereas in the case in hand, the workman has been under engagement since 1999 till 2012, thus has completed about 13 years as daily wager.

The workman has stated in his affidavit that he has been out of job after his disengagement. Every person does make endeavor to survive it is not that only a street beggar will be considered a person out of job. Relying on the Division Bench Judgment referred to above the workman in the case in hand is also held entitled to be reinstated with 50% of back wages, payable to him within 30 days from the date of Award, failing which interest @ of 8% from the date of Award till payment.

Issue no.-3 is answered accordingly.

### **AWARD**

**Holding the action of management in dismissing the services of Prakash Das Dhananjay, Peon (Daily Wager) by Dy. General Manager, SBI, Zonal Office Vijay Nagar, Jabalpur (MP), the Branch Manager, SBI,**

Civil Line, Main Branch Mandla, Distt. Mandla (MP) by way of verbal order dated 07.11.2012 unjustified in law, he is held entitled to be reinstated with 50% of back wages, payable to him within 30 days from the date of Award, failing which interest @ of 8% from the date of Award till payment. No order as to cost.

DATE: 23/09/2024

P. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 22 अक्टूबर, 2024

**का.आ. 2009.**—औद्योगिक विवाद अधिनियम 1947 (1947 का 14 ) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधतंत्र, संबद्ध नियोजको और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय जबलपुर के पंचाट (46/2012) प्रकाशित करती है।

[सं. एल-12011/03/2012-आई.आर. (बी-1)]

सलोनी, उप निदेशक

New Delhi, the 22nd October, 2024

**S.O. 2009.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.46/2012) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Jabalpur* as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen.

[No. L-12011/03/2012- IR (B-I)]

SALONI, Dy. Director

#### ANNEXURE

#### THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

NO. CGIT/LC/R/46/2012

Present: P.K.Srivastava

H.J.S..( Retd)

General Secretary

Rashtriya Kruth Bank Karmachari Sangathan

F-1, Tripti Vihar, Opposite Engineering College

Ujjain (M.P.)

Workman

Versus

The Chief Manager

State Bank of India,

Town Hall, Mhow (M.P.)

Management

#### A W A R D

(Passed on this 30<sup>th</sup> day of September-2024.)

As per letter dated 15/03/2012 by the Government of India, Ministry of Labour, New Delhi, the reference is made to this Tribunal under section-10 of I.D. Act, 1947 as per reference number L-12011/03/2012/IR(B-I) dt. 15/03/2012. The dispute under reference related to :-

*“Whether the demand of the Union, Rashtriya Kruth Bank Karmachari Sangathan for payment of full wages to Shri P.D. Chouhan w.e.f. from 12.07.98 (after completion of one year of suspension) to 24.10.2000 is legal and justified ? To what relief the workman is entitled ?”*

After registering the case on the basis of the reference received, Notices were sent to the parties and were duly served on them. They appeared and filed their respective statements of claim and defense.

**In short**, the admitted facts are that the workman was suspended on 12.07.1997 by management with respect to alleged misconduct. He was issued charge-sheet on 20.03.1998 alleging misconduct with respect to financial irregularities. This charge-sheet was served on him on 18.06.1998. He filed his reply on 24.06.1998. The management ordered regular departmental inquiry on 28.04.1999 and his services were terminated by management on the basis of the inquiry report on 09.02.2000. According to the workman, he remained suspended during the period of inquiry, for a period of more than one year, hence he is entitled to full suspension allowance in the light of para 557 of Desai Award and para 17.14 of the Bipartite Settlement III.

Management has contested his this claim on the ground that a First Information Report was registered against the workman with respect to the incident with local Police on 30.08.1997 which was investigated and charge-sheet under Section 409/420/467/468 of I.P.C. was filed against him after investigation which continued till 30.12.1997. Hence, the delay was due to the fact that there was a Police investigation going on. Hence the protection mentioned above is not available to the workman.

Since, facts are undisputed, only point of law is involved, none of the parties produced any evidence. I have heard argument of learned Counsel Mr. Uttam Maheshwari for Workman and argument of Mr. Pranay Choubey learned Counsel for management. I have gone through the record as well.

Learned Counsel has mentioned the relevant portion of the Bipartite Settlement which is being reproduced as follows:-

**“1. Subsistence allowance during the period of suspension should be granted on the following scale:**

**A. Where the enquiry is departmental by the bank :**

**(1) Where the investigation is not entrusted to or taken up by an outside agency (i.e. Police/CBI):**

- (a) For the first three months of suspension one third of the pay and allowances which the workman would have got but for the suspension :**
- (b) For the period of suspension if any, thereafter, one half of the pay and allowance which the workman would have got but for the suspension provided that after one year of suspension full pay and allowances will be payable if the enquiry is not delayed for reasons attributable to the concerned workman or any of his representatives.**

**2. Where the investigation is done by an outside agency (i.e. Police/CBI) and such investigation is followed by a departmental enquiry by the bank and not by prosecution:**

- (a) For the First three months of the suspension one third of the pay and allowance which the workman would have got but for the suspension :**
- (b) For the period of suspension, if any, thereafter, one half of the pay and allowances which the workman would have got but for the suspension ;**

**Provided that full pay and allowances will be payable after six months from the date of receipt of report of the investigating agency that it has come to the conclusion not to prosecute the employee or one year after the date of suspension whichever is later;**

**And provided further that the enquiry is not delayed for reasons attributable to the concerned workman or any of his representatives.**

**B. Where the enquiry is held by an outside agency including a trial in a criminal court (irrespective of whether the enquiry/ trial is preceded by an investigation by an outside agency (i.e. Police/CBI) or not:**

- (a) For the first six months of the suspension one third of the pay and allowances which the workman would have got but for the suspension;**
- (b) For the period of suspension, if any, thereafter one half of the pay and allowances which the workman would have got but for the suspension, until the enquiry is over.”**

Undisputedly, a Police investigation was going on with respect to the misconduct alleged on the basis of which the workman was dismissed from service after inquiry. Hence, in these circumstances, the action of management in not granting full pay as suspension allowance after one year of suspension during the inquiry is held justified in law. This view is supported by judgment of Hon'ble the Apex Court in **Civil Appeal No.-4386/2002 in the case of Punjab National Bank vs. Burnard Lakra**, referred to from the side of management. In the referred case also the matter was being investigated by CBI and the workman was under suspension for more than one year.

In the light of above findings, reference is answered as follows:-

**AWARD**

**Holding the action of management in not paying full suspension allowance to the workman P.D. Chouhan from 12.07.1998 to 09.02.2000 justified in law, the workman is held entitled to no relief. No order as to cost.**

DATE: 30/09/2024

P. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 22 अक्टूबर, 2024

**का.आ. 2010.**—औद्योगिक विवाद अधिनियम 1947 (1947 का 14 ) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधन, संबंधित नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय जबलपुर के पंचाट (140/2017) प्रकाशित करती है।

[सं. एल-12011/10/2017-आई.आर. (बी-1)]

सलोनी, उप निदेशक

New Delhi, the 22nd October, 2024

**S.O. 2010.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.140/2017) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Jabalpur* as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen.

[No. L-12011/10/2017- IR (B-I)]

SALONI, Dy. Director

**ANNEXURE**

**THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR**

**NO. CGIT/LC/R/140/2017**

**Present: P.K.Srivastava**

**H.J.S..( Retd)**

**General Secretary**

**Rashtriya Kruthi Bank Karmachari Sangathan**

**F-1, Tripti Vihar, Opposite Engineering College**

**Ujjain (M.P.)**

**Workman**

**Versus**

**The Assistant General Manager**

**State Bank of India,**

**RBO -1, 5, Y.N. Road, Indore (M.P.) - 452003**

**Management**

**A W A R D**

**(Passed on this 27<sup>th</sup> day of September-2024.)**

As per letter dated 17/10/2017 by the Government of India, Ministry of Labour, New Delhi, the reference is made to this Tribunal under section-10 of I.D. Act, 1947 as per reference number L-12011/10/2017/IR(B-I) dt. 17/10/2017. The dispute under reference related to :-

***“Whether the management of Asstt. General Manager, State Bank of India, Region-1, RBO, Indore in not paying full suspension allowance to Shri Narhari Shastri from 23.08.98 to 23.07.2003 (ie., the date of dismissal from service) as per 557 of the Sastry Award read with paragraph 17.14 of the Desai Award legal/justified ? If not, to what relief the workman concerned Shri Narhari Shastri is entitled to ?”***

After registering the case on the basis of the reference received, Notices were sent to the parties and were duly served on them. They appeared and filed their respective statements of claim and defense.

**In short**, the admitted facts are that a First Information Report was registered against the workman with respect to some fraud of Rs. 10,85,414/- of Bank money while he was working in the Mhow Branch of the Bank in Indore. He was suspended on account of his involvement with respect to fraudulent withdrawals from various accounts and was dismissed after inquiry on 23.07.2003. According to the workman, he remained suspended during the period of inquiry, hence he is entitled to full suspension allowance in the light of para 557 of Desai Award and para 17.14 of the Bipartite Settlement III. Management has contested his this claim on two grounds, namely unreasonable delay of more than 21 years and secondly, that the case was under investigation by Police, hence the protection mentioned above is not available to the workman.

Since, facts are undisputed, only point of law is involved, none of the parties produced any evidence. Workman side did not appear at the stage of argument. I have heard argument of Mr. Pranay Choubey learned Counsel for management and have gone through the record.

Learned Counsel has mentioned the relevant portion of the Bipartite Settlement which is being reproduced as follows:-

- “1. Subsistence allowance during the period of suspension should be granted on the following scale:**
  - A. Where the enquiry is departmental by the bank :**
  - (2) Where the investigation is not entrusted to or taken up by an outside agency (i.e. Police/CBI):**
    - (a) For the first three months of suspension one third of the pay and allowances which the workman would have got but for the suspension :**
    - (b) For the period of suspension if any, thereafter, one half of the pay and allowance which the workman would have got but for the suspension provided that after one year of suspension full pay and allowances will be payable if the enquiry is not delayed for reasons attributable to the concerned workman or any of his representatives.**
  - 2. Where the investigation is done by an outside agency (i.e. Police/CBI) and such investigation is followed by a departmental enquiry by the bank and not by prosecution:**
    - (a) For the First three months of the suspension one third of the pay and allowance which the workman would have got but for the suspension :**
    - (b) For the period of suspension, if any, thereafter, one half of the pay and allowances which the workman would have got but for the suspension ;**

**Provided that full pay and allowances will be payable after six months from the date of receipt of report of the investigating agency that it has come to the conclusion not to prosecute the employee or one year after the date of suspension whichever is later;**

**And provided further that the enquiry is not delayed for reasons attributable to the concerned workman or any of his representatives.**
  - B. Where the enquiry is held by an outside agency including a trial in a criminal court (irrespective of whether the enquiry/ trial is preceded by an investigation by an outside agency (i.e. Police/CBI) or not:**
    - (a) For the first six months of the suspension one third of the pay and allowances which the workman would have got but for the suspension;**
    - (b) For the period of suspension, if any, thereafter one half of the pay and allowances which the workman would have got but for the suspension, until the enquiry is over.”**

Undisputedly, a Police investigation was going on with respect to the misconduct alleged on the basis of which the workman was dismissed from service after inquiry. Secondly, there is no evidence to indicate that the delay in the inquiry was not due to the workman. Hence, in these circumstances, the action of management in not granting full pay as suspension allowance after one year of suspension during the inquiry is held justified in law. This view is supported by judgment of Hon'ble the Apex Court in Civil Appeal No.-4386/2002 in the case of Punjab National Bank vs. Burnard Lakra. In the referred case also the matter was being investigated by CBI and the workman was under suspension for more than one year.



In the light of above findings, reference is answered as follows:-

### AWARD

**Holding the action of management in not paying full suspension allowance to the workman Narhari Shastri from 23.08.1998 to 23.07.2003 justified in law, the workman is held entitled to no relief. No order as to cost.**

DATE: 27/09/2024

P. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 22 अक्टूबर, 2024

**का.आ. 2011.**—औद्योगिक विवाद अधिनियम 1947 (1947 का 14 ) की धारा 17 के अनुसरण में केन्द्रीय सरकार कमांडेंट सेलेक्शन सेंटर सेंट्रल के प्रबंधतंत्र, संबद्ध नियोजको और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय जबलपुर के पंचाट (43/2016) प्रकाशित करती है।

[सं. एल-14012/14/2016-आई.आर. (बी-1)]

सलोनी, उप निदेशक

New Delhi, the 22nd October, 2024

**S.O. 2011.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.43/2016) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Jabalpur* as shown in the Annexure, in the industrial dispute between the management of The Commandant Selction Centre Central and their workmen.

[No. L-14012/14/2016- IR (B-I)]

SALONI, Dy. Director

### ANNEXURE

#### THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

NO. CGIT/LC/R/43/2016

Present: P.K.Srivastava

H.J.S..( Retd)

Deepak Choudhary

S/o. Late Poonaji Choudhary

Qtr. No. 135, Housing Board Colony

Nariyal Kheda, Bhopal (MP)

Workman

Versus

The Commandant

Selection Centre Central,

Sultania Infantry Lines,

Bhopal (MP)

Management

### A W A R D

(Passed on this 20<sup>th</sup> day of September-2024.)

As per letter dated 25/04/2016 by the Government of India, Ministry of Labour, New Delhi as made this reference to the Tribunal under section-10 of Industrial Disputes Act, 1947 (in short the 'Act') as per reference number L-14012/14/2016 - IR(DU) dt. 25/04/2016. The dispute under reference related to :-

***"Whether the action of management that the matter does not come under the purview of I.D. Act 1947 is legal and justified ? If not, to what relief the workman is entitled to and from which date ?***

*This reference was amended by the Central Government as follows :-*

***Whether the action of management of Commandant Selection Centre Central, Sultania Infantry Lines Bhopal in terminating the service of Shri Deepak Choudhary S/o. Late Poona Ji Choudhary w.e.f. 11.02.2015 where he worked as Mess Waiter from the year 2003 is legal and justified ? If not, what relief he is required to and what directions are necessary in the case ?***

After registering the case on the basis of the reference received, Notices were sent to the parties and were duly served on them. They appeared and filed their respective statements of claim and defense.

**The admitted facts connected to the dispute in the reference are that,** the workman Deepak Choudhary was engaged as casual labour by the management to work as Mess Waiter in the Officers Mess from 2003 to 11.02.2015. According to the workman, he worked daily and continuously from the date of engagement in 2003 as Mess Waiter till 11.02.2015 and completed more than 240 days in every year, thus acquired the status of a permanent employee, whereas the case of management is that he was engaged on requirement basis and was paid his wages but never worked continuously for 240 days in any year, including the year preceding the date of his disengagement. According to the workman, he was disengaged without compensation or notice, hence his disengagement is in violation of the provision of Section 25-F of the Industrial Disputes Act, 1947 (in short the Act, 1947) whereas according to management his disengagement is not in violation of the Act. Further management has taken the plea that it is not an Industry as defined in the Act. The workman has requested that holding his termination against law, he be held entitled to reinstatement with back wages and benefits and also entitled to be regularized as Mess Waiter, whereas management has requested that the reference be answered against the workman.

The workman side has filed rejoinder wherein he has mainly reiterated his allegations in the statement of claim.

**In evidence,** the workman has filed his affidavit, he has been cross examined by management. He has also filed and proved photocopy documents certificates Ex. W/1 & W/2.

Management side has filed affidavit of its witness as his examination in chief, he has been cross examined by workman. Management has filed and proved Ex. M/1, which is certificate issued on 08.01.2008 regarding non availability of Mess Waiter.

I have heard argument of Advocate Shri Arun Patel for workman and Shri R.K. Jaiswal learned Counsel for management. I have gone through the record as well.

On perusal of record in the light of rival arguments, following issues arise for determination :-

- 1) ***Whether, the officers mess in the Selection Centre Sultania Infantry Lines is 'industry' as defined U/S. 2(j) of the Act ?***
- 2) ***Whether, the workman has successfully proved his continuous engagement for 240 days in an year ?***
- 3) ***Whether, the disengagement of the workman is legal ?***
- 4) ***Whether, the workman is entitled to any benefit ?***

**Issue No.-1 :-**

According to the management, since they are defence establishment, engaged in sovereign activity, they are not industry as defined u/s. 2(j) of the Act. Case of workman is that since the workman was working as a mess waiter in the officers mess, which deals with non military activities, hence it is an industry. Section 2 (j) of the Act defines industry as follows :-

**2(i).** "industry" means any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen;

In the light of principle of law laid down by Hon'ble Supreme Court in the famous case of **Banglore Water Works and Sewerage Board Vs. Rayappa, (1978) 2 SCC 213**, since no sovereign functions are discharged by the officers mess, it is an industry as defined U/S. 2(j) of the Act. Issue no.-1 is answered accordingly.

**Issue No.-2 :-**

Before, entering into any discussion, Section 25-B of the Act is being reproduced as follows :-

**25B. Definition of continuous service.**—For the purposes of this Chapter,—

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer—

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than—

(i) one hundred and ninety days in the case of a workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case;

(b) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than—

(i) ninety-five days, in the case of a workman employed below ground in a mine; and

(ii) one hundred and twenty days, in any other case.

*Explanation.*—For the purposes of clause (2), the number of days on which a workman has actually worked under an employer shall include the days on which—

(i) he has been laid-off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946), or under this Act or under any other law applicable to the industrial establishment;

(ii) he has been on leave with full wages, earned in the previous years;

(iii) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and

(iv) in the case of a female, she has been on maternity leave; so, however, that the total period of such maternity leave does not exceed twelve weeks.

The initial burden to prove this issue is on the workman. Pleadings of the parties on this issue have been elaborated earlier. The workman has corroborated his allegations in his statement of claim in his affidavit filed as his examination in chief. In his cross examination, he states that he was not issued any appointment letter, he used to work as a mess waiter. He is filed and proved documents as mentioned above which corroborate his allegations that he worked with the management.

According to the statement of management witness in his cross examination, the Ex. W/1 and W/2, which are issued by the officers of management showing that the workman worked for three years and six years as a mess waiter in the officers mess as casual labour (W/1 issued on 19.02.2008 and W/2 issued on 28.11.2011), these officers issuing these certificates were not authorized for issuing these certificates and they might have been issued as a welfare gesture. This witness nowhere states that these certificates were not issued by those whose signature is on these certificates, also nowhere states that these certificates are incorrect factually. This witness further states that records regarding payment of wages and attendance with respect to the workman are available with management since 2004 and they may be produced but these records have not been produced. In the light of this statement of management witness, the statement of workman and his case that he worked continuously for 240 days in every year till the date of his termination appear more reliable and is held proved.

Hence, the claim of the workman that he worked continuously for 240 days in a year is held proved.

Issue No.-2 is answered accordingly.

### **Issue No.-3 :-**

Before entering into any discussion on merit, Section 25-F & 25-G of the Act are being reproduced as follows :-

**25F. Conditions precedent to retrenchment of workmen.**—No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until—

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.

**25G. Procedure for retrenchment.**—Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman.

Case of the workman is that he was not issued any notice of retrenchment nor was he paid compensation, which he has corroborated in his evidence. It is not the case of management that he was paid any compensation or given prior notice. Hence, termination of his services is held in violation of 25-F & 25-G of the Act and issue no.-2 is answered accordingly.

**Issue No.-4:-**

In the light of findings recorded above the question arises as to what relief the workman is entitled ?

According to the management, the recruitment process for regular appointment of mess waiter against the vacancy over which the workman was working as daily wager took place in the year 2008. The recruitment rules were changed in 2002 minimum qualification for mess waiter were class 8<sup>th</sup> pass with six months experience. Since, the workman was not class 8<sup>th</sup> pass, he could not be considered for regular appointment and was not considered. This qualification has now changed since 2011 and minimum qualification is now high school pass. The copies of the relevant notifications published in Official Gazette, filed by management corroborate this fact. According to the management, the post has been filled by regular appointment.

Learned Counsel for management has submitted that compensation may be in the interest of justice in the case in hand because the workman was not appointed against a sanctioned vacancy following recruitment procedure. He has referred to following decisions in this respect :-

- 1) *Mahboob Deepak Vs. Nagar Panchayat Gajroula. (2008) 1 SCC 575.*
- 2) *State of Haryana Vs. Piara Singh, (1992) LIC 2168.*
- 3) *Himanshu Kumar Vidyarthi Vs. State of Bihar, AIR 1997 SC 3657.*
- 4) *Secretary, State of Karnataka Vs. Uma Devi, (2006) 4 SCC 1.*

Hence, in the light of these facts, reinstatement of the workman is not possible. In my considered view keeping in mind all the facts and circumstances of the case in hand, a lump sum compensation of Rs. 1,00,000/- only in lieu of all the claims of the workman, payable within 30 days from the date of publication of the Award, failing which interest @ of 8% p.a. from the date of Award till payment, will meet the ends of justice.

Issue no.-4 is answered accordingly.

**AWARD**

**Holding the action of management of Commandant Selection Centre Central, Sultania Infantry Lines Bhopal in terminating the service of Shri Deepak Choudhary S/o. Late Poona Ji Choudhary w.e.f. 11.02.2015 where he worked as Mess Waiter from the year 2003 illegal and unjustified, the workman is held entitled to a lump sum compensation of Rs. One lac in lieu of all his claims, payable to the him within 30 days from the date of Award, failing which interest @ of 8% from the date of Award till payment. No order as to cost.**

DATE: 20/09/2024

P. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 22 अक्टूबर, 2024

**का.आ. 2012.**—औद्योगिक विवाद अधिनियम 1947 (1947 का 14 ) की धारा 17 के अनुसरण में केन्द्रीय सरकार मध्य प्रदेश ग्रामीण बैंक के प्रबंधतंत्र, संबद्ध नियोजको और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय जबलपुर के पंचाट (31/2021) प्रकाशित करती है।

[सं. एल-12011/07/2021-आई.आर. (बी-1)]

सलोनी, उप निदेशक

New Delhi, the 22nd October, 2024

**S.O. 2012.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.31/2021) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Jabalpur* as shown in the Annexure, in the industrial dispute between the management of Madhya Pradesh Gramin Bank and their workmen.

[No. L-12011/07/2021- IR (B-I)]

SALONI, Dy. Director

**ANNEXURE**

**THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR**

NO. CGIT/LC/R/31/2021

Present: P.K.Srivastava

H.J.S..( Retd)

The Secretary,  
Madhya Pradesh Gramin Bank Ex Staff Union,  
20/3, Sajan Nagar, Near Main Road,  
OBC Bank, Navlakha Area,  
Indore M.P. – 452 001

Workman

Versus

The General Manager,  
Madhya Pradesh Gramin Bank,  
Near 56 Shops, 11 Bangle Colony,  
New Plasiya,  
Indore M.P. – 452 001

Management

**A W A R D**(Passed on this 30<sup>th</sup> day of September-2024.)

As per letter dated 30/03/2021 by the Government of India, Ministry of Labour, New Delhi, the reference is made to this Tribunal under section-10 of I.D. Act, 1947 as per reference number L-12011/07/2021/IR(B-I) dt. 30/03/2021. The dispute under reference related to :-

“क्या म० प्र० ग्रामीण बैंक एक्स स्टाफ संगठन, इंदौर द्वारा उठाई गई 14 सूत्रीय मांगे (संगलन “क ” में वर्णित ) का निराकरण; अध्यक्ष म० प्र० ग्रामीण बैंक प्रधान कार्यालय; इंदौर द्वारा न किया जाना न्यायोचित है? यदि नहीं; तो उक्त यूनियन किय अनुतोष को पाने की अधिकारी है/

क्या अध्यक्ष म० प्र० ग्रामीण बैंक, इंदौर द्वारा उक्त यूनियन से औद्योगिक विवाद में चर्चा न किया जाना विधि विरुद्ध है?

“After registering the case on the basis of the reference received, Notices were sent to the parties and were duly served on them. They appeared and filed their respective statements of claim and defense.

Since the controversy involves only points of law, hence argument of learned counsel Sri Arun Patel for workman and Sri Ashish Shrotri for management were heard by me. I have gone through the record as well.

The reference, as mentioned above, contains as many as 14 demands in the Annexure A attached to the reference. On perusal of these demands, I am constrained to observe that in all these demands which are made, there is no specific demand which can be specifically answered by management and be looked into by this Tribunal. For example demand No. 1 is that gratuity be paid in cases in which there is no specific loss to management. Until a members workmen mention some specific case were gratuity has been withheld, only then management can be in a position to respond to it. Similar are the other demands which are regarding payment of earned leave encasements pensions, revision of punishment orders, early disposal of cases pending in different Courts, withdrawal of FIRs and consideration of claim of dependants of deceased workmen for compassionate appointment/ grant of monetary benefits, etc.

None of these demands is specific hence, reference cannot be answered specifically with respect to these demands. However, it is accepted from management to consider such type of demands as per relevant rules and provisions. With these observations, reference stands disposed. No order as to cost.

**AWARD**

None of these demands is specific, they do not qualify to be an industrial dispute as defined u/s 2(s) of The Industrial Disputes Act 1947. Hence, reference cannot be answered specifically with respect to these demands. However, it is accepted from management to consider such type of demands as per relevant rules and provisions with these observations reference stands disposed. No order as to cost.

Let the copy of Award be sent to the Ministry of Labour and Employment, Government of India as per rules.

DATE: 30/09/2024

P. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 22 अक्टूबर, 2024

**का.आ. 2013.**—औद्योगिक विवाद अधिनियम 1947 (1947 का 14 ) की धारा 17 के अनुसरण में केन्द्रीय सरकार आयुध निर्माणी रायपुर देहरादून के प्रबंधतंत्र, संबद्ध नियोजको और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय लखनऊ के पंचाट (14/2022) प्रकाशित करती है।

[सं. एल-12025/01/2024-आई.आर. (बी-1)-230]

सलोनी, उप निदेशक

New Delhi, the 22nd October, 2024

**S.O. 2013.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.14/2022) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Lucknow* as shown in the Annexure, in the industrial dispute between the management of Ordinance factory Raipur Dehradun and others.

[No. L-12025/01/2024- IR (B-I)-230]

SALONI, Dy. Director

**ANNEXURE**

**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL –CUM- LABOUR COURT, LUCKNOW**

**PRESENT**

**JUSTICE ANIL KUMAR**

**PRESIDING OFFICER**

**I.D. No. 14/2022**

**BETWEEN**

Sri Mahendra Jakhmola

General Secretary, Samvida Shramik Sangh,

Dehradun, 2080001

..... Workman

**Versus**

1. The General Manager,  
Ordinance Factory, Raipur, Dehradun-226012
2. M/s Mahish Infratech Pvt. Ltd.  
D-29, Vibhuti Khand, Gomti Nagar, Lucknow- 248001
3. M/s J4S Security Services.  
Flat No. 8005, 8th Floor, Mapel Tower, Paramount Simphoni, crossing Republic Ghaziabad (UP)- 110066
4. M/s Miraaz Facility Management Services Pvt. Ltd.  
38, Mohammadpur, 3<sup>rd</sup> floor.  
Bhikhaji Kama Place, New Delhi-110066

..... Respondents

**AWARD**

By letter/order dated 29.04.2022 following dispute has been referred to this Tribunal.

*“Whether action of the management of Ordnance Factory, Raipur, Dehradun of reducing manpower hired through contractors resulting in termination of workers w.e.f. 22.10.2022, as raised by Samvida Shramik Sangh, Dehradun vide letter dated 25.10.2021, is proper, legal and justified? If not, to what relief the disputant workers are entitled and what other directions, if any, are necessary in the matter?”.*

Accordingly I.D. Case No. 14/2022 registered before this Tribunal.

On 13.05.2024 when the matter is taken up in the revised cause list.

In spite of the notice, none appeared on behalf of claimant.

Sri Sandeep Naithani authorized representative of respondent is present.

After hearing authorized representative of the respondent and taking into consideration that in spite of the due opportunity given to claimant, claim statement has not been filed, taking into consideration the said fact as well as the law laid by the Hon'ble High Court in the case of V. K. Raj Industries v. Labour Court (I) and others 1981 (29) FLR 194 as under:

*"It is well settled that if a party challenges the legality of an order, the burden lies upon him to prove illegality of the order and if no evidence is produced the party invoking jurisdiction of the Court must fail. Whenever a workman raises a dispute challenging the validity of the termination of service if is imperative for him to file written statement before the Industrial Court setting out grounds on which the order is challenged and he must also produce evidence to prove his case. If the workman fails to appear or to file written statement or produce evidence, the dispute referred by the State Government cannot be answered in favour of the workman and he would not be entitled to any relief."*

In the case of **M/s Uptron Powertronics Employees' Union, Ghaziabad through its Secretary v. Presiding Officer, Labour Court (II), Ghaziabad and others 2008 (118) FLR 1164** Hon'ble Allahabad High Court has held as under:

*"The law has been settled by the Apex Court in case of Shanker Chakravarti v. Britannia Biscuit Co. Ltd., V.K. Raj Industries v. Labour Court and Ors., Airtech Private Limited v. State of U.P. and Ors. 1984 (49) FLR 38 and Meritech India Ltd. v. State of U.P. and Ors. 1996 FLR that in the absence of any evidence led by or on behalf of the workman the reference is bound to be answered by the court against the workman. In such a situation it is not necessary for the employers to lead any evidence at all. The obligation to lead evidence to establish an allegation made by a party is on the party making the allegation. The test would be, who would fail if no evidence is led."*

And by the Hon'ble Allahabad High Court in the case of **District Administrative Committee, U.P. P.A.C.C.S.C. Services v. Secretary- cum-G.M. District Co-operative Bank Ltd. 2010 (126) FLR 519**; wherein it has been held as under:

*"The submission is that even if the petitioner failed to lead the evidence, burden was on the shoulders of the respondent to prove the termination order as illegal. He was required to lead evidence first which he failed. A perusal of the impugned award also does not show that any evidence either oral or documentary was led by the respondent. In the case of no evidence, the reference has to be dismissed."*

As the workman/claimant has not filed claim statement so the present case is liable to be dismissed.

**ORDER**

For the foregoing reasons, the case is dismissed; workman is not entitled for any relief.

Award as above.

Lucknow.

Date 24.06.2024

Justice ANIL KUMAR, Presiding Officer